

09:09AM

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

Case No. 1:19-cr-227

4 Plaintiff,

1:23-cr-37

5 v.

(LJV)

6 PETER GERACE, JR.,

December 17, 2024

7 Defendant.

8 TRANSCRIPT EXCERPT - EXAMINATION OF BRIAN BURNS - DAY 2
9 BEFORE THE HONORABLE LAWRENCE J. VILARDO
10 UNITED STATES DISTRICT JUDGE

11 APPEARANCES:

TRINI E. ROSS, UNITED STATES ATTORNEY

12 BY: JOSEPH M. TRIPI, ESQ.

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16 For the Plaintiff

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18 And

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22 For the Defendant

23 PRESENT:

KAREN A. CHAMPOUX, USA PARALEGAL

24 BRIAN A. BURNS, FBI SPECIAL AGENT

25 MARILYN K. HALLIDAY, HSI SPECIAL AGENT

OLIVIA A. PROIA, J.D., PARALEGAL

LAW CLERK:

REBECCA FABIAN IZZO, ESQ.

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Robert H. Jackson Courthouse

2 Niagara Square Buffalo, New York 14202

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09:23AM 1 (Excerpt commenced at 9:23 a.m.)

09:23AM 2 (Jury seated at 9:23 a.m.)

09:23AM 3 **THE COURT:** Good morning, everyone.

09:23AM 4 **THE JURORS:** Good morning.

09:23AM 5 **THE COURT:** Welcome back. The record will reflect
09:23AM 6 that all our jurors are present.

09:23AM 7 We are going to go until 3:30. That's the latest
09:23AM 8 that you'll be here today. And then tomorrow, at 9:00 again.

09:24AM 9 I remind the witness that he's still under oath.

09:24AM 10 And, Mr. Tripi, you may continue.

09:24AM 11 **MR. TRIPI:** Thank you, Your Honor.

09:24AM 12

09:24AM 13 **B R I A N B U R N S**, having been previously duly called and
09:24AM 14 sworn, continued to testify as follows:

09:24AM 15

09:24AM 16 **(CONT'D) DIRECT EXAMINATION BY MR. TRIPI:**

09:24AM 17 Q. Good morning, Special Agent Burns.

09:24AM 18 A. Good morning, Mr. Tripi.

09:24AM 19 Q. We didn't speak last night, correct?

09:24AM 20 A. We did not, it was a quiet night.

09:24AM 21 Q. Okay. I'll try not to take offense.

09:24AM 22 All right. So, we left off yesterday talking about the
09:24AM 23 box with the file folder that was found in Mr. Bongiovanni's
09:24AM 24 residence the day of that search. I want to ask you about
09:24AM 25 another document that was contained in that file folder.

09:24AM 1 Upon your review of that file folder, did you see a
09:24AM 2 Organized Crime Drug Enforcement Administration Task Force
09:24AM 3 report pertaining to a target named Frank Tripi and an
09:24AM 4 operation named Operation Past Due?

09:24AM 5 A. Yes, I did.

09:25AM 6 **MR. TRIPI:** Ms. Champoux, for the witness only, can
09:25AM 7 we show him Government Exhibit 100A.1-2.

09:25AM 8 **BY MR. TRIPI:**

09:25AM 9 Q. And I'll hand you up a hard copy just in case it's easier
09:25AM 10 for you to flip through. Do you recognize that?

09:25AM 11 A. Yes.

09:25AM 12 Q. What that?

09:25AM 13 A. It's an Organized Crime Drug Enforcement Task Force, it's
09:25AM 14 a pack -- it's basically a summary of the case, and they
09:25AM 15 submit it to a committee. It was in that file in the
09:25AM 16 basement.

09:25AM 17 Q. Okay. And I'll get into what OCDETF is more in just a
09:25AM 18 moment --

09:25AM 19 A. Certainly.

09:25AM 20 Q. -- but is that a fair and accurate copy of the document
09:25AM 21 that was among the documents in that file folder that was
09:25AM 22 recovered from Mr. Bongiovanni's residence?

09:25AM 23 A. Yes, it is.

09:25AM 24 **MR. TRIPI:** The government offers Exhibit 100A.A-2,
09:26AM 25 Your Honor.

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MR. FOTI: I renew my relevance objection.

THE COURT: Okay. Other than that, no objection other than that?

MR. FOTI: No.

THE COURT: Okay. So it's received over the objection.

(GOV Exhibit 100A.A-2 was received in evidence.)

MR. TRIPI: All right. Thank you, Your Honor. May we publish that for the jury?

BY MR. TRIPI:

Q. And then I'll ask just a couple of questions about this document.

A. Certainly.

Q. Just generally, are you familiar with what an Organized Crime Drug Enforcement Task Force investigation initiation form is?

A. Yes.

Q. Can you describe what that is for the jury just in general terms?

A. OCDETF is a program with the Department of Justice on more significant narcotics investigations.

Q. Can I stop you there? You just said "OCDETF." Is that an acronym, O-C-D-E-T-F?

A. Yes, it is. It's a common lingo for that, but Organized Crime Drug Enforcement Task Force. They're for larger scale

1 investigations. It's got to be an organization.

2 And you put together a proposal, and you submit it to the
3 local committee, and it also goes down to main justice, the
4 narcotics section.

5 And then if it's approved, there's additional funding and
6 resources that go along with it. So it's really designed for
7 larger scale investigations that warrant some more resources
8 and attention.

9 Q. And is this a draft of that document that was found in
10 Mr. Bongiovanni's residence?

11 A. Yes, it is.

12 Q. And do you understand that to be a draft because there
13 are some blanks in the OCDETF investigation number in the
14 upper right-hand corner that I've circled on the screen?

15 A. Correct. I think that's -- there's also a signature page
16 that wasn't signed.

17 Q. Okay. And in terms of how OCDETF, Organized Crime Drug
18 Enforcement Task Force, case gets initiated, is the agent
19 required -- the case agent required to fill out a document
20 like this, provide information, and explain the general
21 parameters of the investigation and what's expected?

22 A. Yeah, it's usually done by the case agent and then in
23 concert with who's ever -- what other agents or task force
24 officers are assisting him or her, as well as looping in the
25 U.S. Att -- or, the Assistant United States Attorney that's

09:28AM 1 working on that matter. So it's usually collaborative
09:28AM 2 effort.

09:28AM 3 Q. Okay. On the front page here, you see it says
09:28AM 4 law-enforcement sensitive?

09:28AM 5 A. That's correct.

09:28AM 6 Q. What does that mean?

09:28AM 7 A. That means it should not be disseminated outside of the
09:28AM 8 law enforcement -- these are extremely sensitive documents in
09:28AM 9 that they're targets of investigations, sometimes they
09:28AM 10 reference sources, informants, so it's a very -- it's a
09:28AM 11 law-enforcement sensitive document.

09:28AM 12 Q. Is that the type of document that a retired agent is
09:28AM 13 permitted to bring home?

09:28AM 14 A. No, never.

09:28AM 15 Q. Is it the type of document that an agent is permitted
09:28AM 16 to bring to their house at all?

09:28AM 17 A. Maybe if you wanted to leave it locked in your car if for
09:28AM 18 some reason you're weren't going back in your office, but you
09:28AM 19 should not maintain that in your house or anywhere other
09:28AM 20 individuals can have access to it.

09:29AM 21 Q. Okay. Looking on the first page of this, do you see the
09:29AM 22 operation name?

09:29AM 23 A. The operation, every OCDETF proposal has to have a name,
09:29AM 24 an operation name. So this one's Operation Past Due.

09:29AM 25 Q. And does the front page of that document have who the

1 case attorney was at the U.S. Attorney's Office, as well as
2 the case agents?

3 A. Yes, it does.

4 Q. Is Mr. Bongiovanni one of the case agents at all?

5 A. No, he's not.

6 Q. Okay.

7 **MR. TRIPI:** And can we go to the next page on the
8 screen, Ms. Champoux.

9 **BY MR. TRIPI:**

10 Q. Okay. This second page here, does this list identify a
11 list of targets for this operation that the case agent was
12 contemplating?

13 A. Yeah. At the initiation form, you want to put in your
14 major targets of the investigation.

15 Q. And generally are they sort of ranked in order?

16 A. Usually, I mean, that's how -- I've done a few of these,
17 and that's how I prepare them. But generally I would say
18 that's the common practice.

19 Q. And who was the sort of number 1 target listed here?

20 A. It's Frank Tripi.

21 Q. And it lists ten other targets in addition to him?

22 A. That's correct.

23 **MR. TRIPI:** Okay. Let's go to the next page,
24 Ms. Champoux.

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BY MR. TRIPI:

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Q. And is every page of this document labeled

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law-enforcement sensitive?

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A. Yes, at the top and bottom.

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Q. Generally, does it -- this page 3, just generally does it

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indicate the different police or law enforcement agencies

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that will participating in the investigation?

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A. Yes. Along with their case numbers.

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Q. Okay. And here it has indications for ATF, DEA, IRS,

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state and local investigators, and the Niagara -- which is

09:30AM

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Niagara Falls Police Department?

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A. Yeah, Chris Clark, was the Niagara Falls Police

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Department TFO assigned to DEA.

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Q. And if we go back to the front page, Chris Clark was the

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case agent on this?

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A. That's correct.

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Q. All right.

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MR. TRIPI: Let's go to page 4. Generally, I want

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to --

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BY MR. TRIPI:

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Q. Does this indicate that the investigation involves

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cocaine, crack cocaine, and marijuana in terms of controlled

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substances?

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A. Cocaine, I see cocaine and heroin.

09:31AM

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Q. I misread the boxes. Cocaine, heroin, marijuana, and

1 then other prescription down at the bottom?

2 A. Yes, it does.

3 Q. Does it indicate there also may be some money-laundering
4 methods used?

5 A. Yes, some bulk cash movement and wire transfers, business
6 fronts.

7 Q. Does it indicate the different districts and states and
8 countries that may be impacted by this investigation?

9 A. Yes. Towards the middle of the form, it has Canada,
10 Nevada, and then Northern District of California.

11 **MR. TRIPI:** Let's go to the next page, Ms. Champoux.

12 We can go past this to the next page. And we'll advance to
13 the next page. Let's go to page 8.

14 **BY MR. TRIPI:**

15 Q. All right. At the very top of page 8 of this exhibit, is
16 it labeled DEA sensitive?

17 A. Yes, it is.

18 Q. And generally, does this portion of the document
19 beginning at page 8 outline the details of the investigation
20 that had transpired, and intelligence that had been gathered
21 up to the date where Agent Clark prepared this initiation
22 form?

23 A. Yeah. It's standard. You want to justify it to the
24 committee or the panel why this warrants an OCDEF
25 designation.

09:32AM 1 Q. So this outlines the investigation?

09:32AM 2 A. Correct.

09:32AM 3 Q. That was done up to that date?

09:32AM 4 A. Correct.

09:32AM 5 Q. All right. And just generally, the document indicates
09:32AM 6 there was investigation in 2013; is that about right?

09:33AM 7 A. Yes, it does.

09:33AM 8 Q. Okay.

09:33AM 9 **MR. TRIPI:** Can we go on to the next page,
09:33AM 10 Ms. Champoux?

09:33AM 11 **BY MR. TRIPI:**

09:33AM 12 Q. I'm just going to leave it up there for a moment.

09:33AM 13 Was part of the focus of the investigation as documented
09:33AM 14 in the report surrounding Frank Tripi and a collection agency
09:33AM 15 called Direct Mediators?

09:33AM 16 A. Yes, located on Pine Avenue in Niagara Falls.

09:33AM 17 **MR. TRIPI:** Okay. Go to the next page, Ms. Champoux.

09:33AM 18 **BY MR. TRIPI:**

09:33AM 19 Q. And again, the rest of this form, does it basically
09:33AM 20 describe some of the parameters of the investigation and the
09:34AM 21 investigative techniques and goals?

09:34AM 22 A. Yes, as well as the resources that the -- that they're
09:34AM 23 gonna commit to it.

09:34AM 24 Q. Can you just read under investigative techniques and
09:34AM 25 goals, just under B-1 there, just that first sentence.

09:34AM 1 A. The overall goals of this investigation are to identify
09:34AM 2 the totality of this drug-trafficking organization, DTO,
09:34AM 3 including but not limited to the command and control
09:34AM 4 elements, smuggling routes, and methods, distribution
09:34AM 5 networks, methods utilized to avoid apprehension by law
09:34AM 6 enforcement, and money-laundering methods. Upon
09:34AM 7 identification of these elements, it is the intention of the
09:34AM 8 investigating agents to disrupt and dismantle all identified
09:34AM 9 elements of this conspiracy.

09:34AM 10 Q. All right. So read on to the next page.

09:34AM 11 A. Oh, I'm sorry.

09:34AM 12 Q. That's okay.

09:34AM 13 A. I wasn't sure.

09:34AM 14 Q. All right. Now, you've been in this law enforcement
09:35AM 15 community for -- in the Buffalo area since, I think you said,
09:35AM 16 2008, 2009?

09:35AM 17 A. A long time.

09:35AM 18 Q. In terms of reputation in the law enforcement community,
09:35AM 19 does Frank Tripi, the main target of this investigation, have
09:35AM 20 a reputation?

09:35AM 21 A. Yes, he does.

09:35AM 22 Q. In your experience, is his reputation one of being an
09:35AM 23 associate or potential associate of Italian Organized Crime
09:35AM 24 in this area?

09:35AM 25 A. Yes, he is.

09:35AM 1 **MR. FOTI:** Objection.

09:35AM 2 **THE COURT:** I'm sorry?

09:35AM 3 **MR. FOTI:** Objection.

09:35AM 4 **THE COURT:** Basis?

09:35AM 5 **MR. FOTI:** Judge, hearsay, 602, relevance.

09:35AM 6 **THE COURT:** Overruled.

09:35AM 7 **MR. TRIPI:** Ms. Champoux, we can take that down.

09:35AM 8 Now, I'd like to pull back up Government

09:35AM 9 Exhibit 310AT, Ms. Champoux. And we can just briefly look at

09:35AM 10 record 48 within that document.

09:36AM 11 **BY MR. TRIPI:**

09:36AM 12 Q. Now 310AT is the contacts, some of the contacts that were

09:36AM 13 in Mr. -- the defendant's phone, correct?

09:36AM 14 A. That's correct.

09:36AM 15 Q. Is there an entry for -- for Frank Tripi?

09:36AM 16 A. Yes, there is.

09:36AM 17 Q. Do you see that phone number associated with him?

09:36AM 18 A. Yes, I do.

09:36AM 19 Q. Now, Exhibit Number 358 was Mr. Bongiovanni's phone

09:36AM 20 records, correct?

09:36AM 21 A. That's correct.

09:36AM 22 Q. Have you reviewed those phone records?

09:36AM 23 A. Yes, I have.

09:36AM 24 Q. In Mr. Bongiovanni's phone records, Exhibit 358 I believe

09:36AM 25 it is, did you see contact with this phone number for Frank

1 Tripi in the year of 2018?

2 A. Yes, I believe it was October of 2018.

3 Q. And Mr. Bongiovanni was not part of any investigation of
4 Frank Tripi, you had the agents listed on the report we just
5 read, correct?

6 A. That's correct.

7 **MR. TRIPI:** We can take that down, Ms. Champoux.

8 **BY MR. TRIPI:**

9 Q. In terms of the timeline on October 31st, 2019, was
10 Mr. Bongiovanni charged by indictment?

11 A. Yes, he was.

12 Q. In that initial indictment, was it unsealed within or
13 made public within a couple of days after that?

14 A. Into November, early November.

15 Q. In that initial document, was this defendant referenced
16 as Coconspirator 1?

17 A. Yes, he was.

18 Q. Was a gentleman's club referenced in that document?

19 A. Not Pharaoh's itself, but a gentleman's club.

20 Q. At that time, was there media attention surrounding the
21 Bongiovanni indictment?

22 A. Pretty significant media attention.

23 Q. Okay. And so that was about a month and a half before a
24 search warrant was executed at Pharaoh's and this defendant's
25 residence; is that right?

09:37AM 1 A. That's correct.

09:38AM 2 Q. Were those search warrants executed, federal search

09:38AM 3 warrants, on December 12th, 2019?

09:38AM 4 A. They were.

09:38AM 5 Q. Were you present for the execution of a federal search

09:38AM 6 warrant that day at Pharaoh's Gentlemen's Club -- "that day"

09:38AM 7 meaning December 12th, 2019, located at 999 Aero Drive in

09:38AM 8 Cheektowaga, New York?

09:38AM 9 A. Yes, I was present for that search warrant.

09:38AM 10 Q. Is that a commercial establishment with a large a bar?

09:38AM 11 A. Yeah, it's Pharaoh's Gentlemen's Club.

09:38AM 12 Q. Based on your investigation and your participation in it,

09:38AM 13 is that an establishment that advertises on Facebook and

09:38AM 14 other parts of the internet?

09:38AM 15 A. Yes, and the radio as well.

09:38AM 16 Q. Does it have a website promoting its bar, food, and

09:38AM 17 gentlemen's club business?

09:38AM 18 A. It does.

09:38AM 19 Q. And you indicated they also advertise on the radio?

09:38AM 20 A. Yes, I've heard their advertisements on 97 Rock.

09:38AM 21 Q. How close is that to the airport?

09:38AM 22 A. Oh, a mile or two, very close.

09:39AM 23 Q. That same day, was there a search at the defendant's

09:39AM 24 residence, we've seen the photo a few times, on Luxor Lane?

09:39AM 25 A. Yeah, the search warrants were executed simultaneously.

09:39AM 1 Q. And what does that mean?

09:39AM 2 A. When you're doing an operation with multiple search

09:39AM 3 warrants, it's advantageous to execute them at the same time

09:39AM 4 because obviously if you hit one place, you know, that person

09:39AM 5 usually calls the other one, and a lot of times you can lose

09:39AM 6 evidence and things like that. So it's pretty routine that

09:39AM 7 you would want to execute multiple warrants at the same time

09:39AM 8 with different teams.

09:39AM 9 Q. In terms of the division of labor of the case agents who

09:39AM 10 were on the case by that point, was HSI Special Agent Curtis

09:39AM 11 Ryan sort of the lead over at the defendant's residence

09:39AM 12 search?

09:39AM 13 A. Yes. There was some agents, or at least one agent as

09:39AM 14 well.

09:39AM 15 Q. And were you and Special Agent Halliday over at the

09:39AM 16 location at Pharaoh's Gentlemen's Club?

09:39AM 17 A. With a number of other law enforcement personnel.

09:39AM 18 Q. Was the defendant at either location?

09:40AM 19 A. He was not.

09:40AM 20 Q. At Pharaoh's, did you have an opportunity to walk around

09:40AM 21 the premises?

09:40AM 22 A. Yes. I went mostly on the first floor.

09:40AM 23 Q. You did a walk-through?

09:40AM 24 A. Yes. Not searching.

09:40AM 25 Q. Did you conduct an interview of John Ermin, who I think

09:40AM 1 we've heard his nickname is Tommy O, that day?

09:40AM 2 A. Yes, I did.

09:40AM 3 Q. Is he a member of the Outlaws Motorcycle Club?

09:40AM 4 A. He is.

09:40AM 5 Q. Was this search roughly almost -- almost a year after the
09:40AM 6 January 2019 search that HSI had executed at Anthony Gerace's
09:40AM 7 house in Clarence, New York?

09:40AM 8 A. Yeah, about 11 months.

09:40AM 9 Q. Independently, did Anthony Gerace's case in January of
09:40AM 10 2019 receive some media attention?

09:41AM 11 A. It did.

09:41AM 12 Q. Getting back to the search warrant at Pharaoh's,
09:41AM 13 December 12th, 2019, are you aware of whether there was a
09:41AM 14 camera system and whether DVRs were recovered during the
09:41AM 15 search?

09:41AM 16 A. Oh, yes. There were three DVRs recovered during that
09:41AM 17 search. I didn't personally seize them, but they were
09:41AM 18 recovered, I'm familiar with them.

09:41AM 19 Q. You've reviewed the evidence in the case?

09:41AM 20 A. Evidence, yes.

09:41AM 21 Q. You've reviewed the photos of the search?

09:41AM 22 A. Absolutely.

09:41AM 23 Q. You know how many DVRs were seized that day?

09:41AM 24 A. Yes.

09:41AM 25 Q. You were present while those things were happening?

09:41AM 1 A. Yes, I was.

09:41AM 2 Q. Okay. Were those three DVRs reviewed by members of the

09:41AM 3 investigative team working with you?

09:41AM 4 A. Yes, they were.

09:41AM 5 Q. Are you aware of how long did those three DVR store

09:41AM 6 footage for?

09:41AM 7 A. Two of the DVRs, I had an understanding that the DVRs had

09:41AM 8 multiple cameras attached to them. Two of the DVRs

09:41AM 9 maintained footage for two weeks, and then one DVR maintained

09:42AM 10 footage for about seven weeks.

09:42AM 11 Q. Okay. So that would be two weeks operating backwards

09:42AM 12 from December 19th -- or, excuse me, December 12th, 2019,

09:42AM 13 correct?

09:42AM 14 A. That's correct.

09:42AM 15 Q. For two of the DVRs?

09:42AM 16 A. Yes.

09:42AM 17 Q. And then seven weeks for the other?

09:42AM 18 A. Yeah, six and a half to seven, I believe it was.

09:42AM 19 Q. So essentially two DVRs had footage going back to late

09:42AM 20 November, and another DVR had footage going back to maybe the

09:42AM 21 end of October?

09:42AM 22 A. Approximately.

09:42AM 23 Q. So, those DVRs did not contain any footage from 2013

09:42AM 24 through 2018; is that right?

09:42AM 25 A. They did not.

09:42AM 1 Q. And they didn't contain any footage from even September
09:42AM 2 2019; is that right?

09:42AM 3 A. That's correct.

09:42AM 4 Q. I want to talk to you a little bit about the
09:42AM 5 investigation itself. As the investigation progressed, were
09:43AM 6 you and others, beginning in sort of the summer of 2020,
09:43AM 7 trying to locate and interview women who had worked at
09:43AM 8 Pharaoh's?

09:43AM 9 A. Yes. We had a number of agents running down different
09:43AM 10 leads trying to identify and interview leads.

09:43AM 11 Q. For example, is that the same summer that individuals
09:43AM 12 that were helping you on the case, Task Force Officers
09:43AM 13 Geraldo Rondon and Angel Benitos-Santos went to Pennsylvania
09:43AM 14 and found L.L.?

09:43AM 15 A. Yes. They were part of different teams going out
09:43AM 16 attempting to locate the dancers and interviewing them.

09:43AM 17 Q. Did a number of the dancers that you and others located
09:43AM 18 testify at this trial?

09:43AM 19 A. Yes.

09:43AM 20 Q. Did the process of trying to identify and locate dancers
09:43AM 21 continue essentially right up until the trial?

09:43AM 22 A. Absolutely.

09:43AM 23 Q. Were there challenges associated with dancer names or
09:43AM 24 stage names?

09:43AM 25 A. Yeah. It was -- it was difficult because a lot of times

1 we would only get the stage name and not the actual
2 individual's true name. Some of them were transient, it was
3 hard to find them. A lot of them didn't have stable housing.
4 Some had left the state. So there was a lot of those sort of
5 challenges in locating these dancers. And a lot of them
6 didn't really want to be found.

7 Q. At times, did some dancers share stage names? In other
8 words, were there multiple Barbies, for example?

9 A. Yes, I think there were three or four Barbies, and there
10 was a lot of -- a lot of overlap with some of the names, and
11 trying to figure out who was who was not always easy.

12 Q. I -- I you think you mentioned, but were some of the
13 dancers from even other states?

14 A. Yes, other states.

15 Q. Now, since the investigation commenced, have other
16 witnesses or individuals connected to the investigation in
17 some way become unavailable along the way?

18 A. Yes, a number of them.

19 Q. For example, the jury has heard about and seen a photo of
20 Wayne van Vleet. Is he currently deceased?

21 A. Yes, he's deceased as of October this year.

22 Q. Was he interviewed prior to being deceased?

23 A. Multiple times.

24 **MR. FOTI:** Objection.

25 **THE COURT:** I'm sorry?

09:45AM 1 MR. FOTI: Objection.

09:45AM 2 THE COURT: Was he interviewed?

09:45AM 3 MR. FOTI: I'll withdraw the objection to that
09:45AM 4 specific question.

09:45AM 5 MR. TRIPI: That's as far as I'm going, Judge.

09:45AM 6 THE COURT: Pardon me?

09:45AM 7 MR. TRIPI: That's as far as I'm going.

09:45AM 8 THE COURT: Yeah.

09:45AM 9 BY MR. TRIPI:

09:45AM 10 Q. Is Crystal Quinn deceased?

09:45AM 11 A. Yes, she is.

09:45AM 12 Q. And the jury may have heard her name in connection with
09:45AM 13 sending some of those messages to P.H.?

09:45AM 14 A. The ones from November of --

09:45AM 15 Q. On Facebook, right?

09:45AM 16 A. That's correct.

09:45AM 17 Q. Is she currently deceased?

09:45AM 18 A. Yes, she is. She passed away in --

09:45AM 19 Q. Was she --

09:45AM 20 A. -- fall -- I'm sorry.

09:45AM 21 Q. -- was she interviewed prior to being deceased?

09:45AM 22 A. Yes, she was. Multiple times.

09:45AM 23 Q. The jury's heard about New York State Supreme Court Judge
09:45AM 24 John Michalski. Is he currently deceased?

09:46AM 25 A. Yes, he is.

09:46AM 1 Q. Did the FBI attempt to interview him prior to his being
09:46AM 2 deceased?

09:46AM 3 A. Yes, we did.

09:46AM 4 Q. Did the FBI execute a search warrant at his residence?

09:46AM 5 A. Yes, we did.

09:46AM 6 Q. In terms of you've heard some cross-examination as the

09:46AM 7 jury sat through the trial, and you sat at the back table,

09:46AM 8 you've heard some cross-examination of several witnesses

09:46AM 9 about expenses for various things, the housing and

09:46AM 10 transportation that the FBI paid for; do you recall that --

09:46AM 11 A. Yes, I do.

09:46AM 12 Q. -- as you sat here?

09:46AM 13 I want to talk a little bit about L.L. for a moment.

09:46AM 14 A. Certainly.

09:46AM 15 Q. Okay? And then I'll go to a couple others.

09:46AM 16 A. Okay.

09:46AM 17 Q. Give me one second. Obviously, the jury saw Ms. L.L.

09:46AM 18 testify as recently as yesterday. After she testified in the

09:47AM 19 grand jury in July of 2020, was her identity kept secure?

09:47AM 20 A. Yes, it was.

09:47AM 21 Q. At that point in time in her life, was she residing on

09:47AM 22 her own approximately three hours away round trip from this

09:47AM 23 courthouse?

09:47AM 24 A. Yes, she was.

09:47AM 25 Q. Fast forwarding, as trial approached in the year of 2023,

09:47AM 1 did she have issues with transportation?

09:47AM 2 A. Yes. We had -- she didn't have a -- we had to transport
09:47AM 3 her from where she was residing.

09:47AM 4 Q. Did that involve agents driving three hours round trip?

09:47AM 5 A. On some occasions. She did have a vehicle for a period
09:47AM 6 of time.

09:47AM 7 Q. Did she also have issues living in proximity to a drug
09:47AM 8 dealer in the town she was living in?

09:47AM 9 A. Yes.

09:47AM 10 Q. In your mind as the case agent, did that create a safety
09:47AM 11 issue for her?

09:47AM 12 A. A safety issue and abuse issue, obviously.

09:47AM 13 Q. I guess I was lumping drug abuse into the safety issue.

09:48AM 14 A. Fair enough.

09:48AM 15 Q. Okay. As trial approached in the year of 2023, did she
09:48AM 16 become nervous consistent with sort of her original
09:48AM 17 indications when she was first interviewed?

09:48AM 18 A. Yes. We were prepared to have a trial, and at that point
09:48AM 19 she -- we -- we obviously explained to her along the way that
09:48AM 20 until there's a trial, no one really knows who you are. But
09:48AM 21 when there's trial, you're going to be in court and you're
09:48AM 22 gonna be known, and it's gonna be public, your assistance.

09:48AM 23 Q. And we've heard a little bit about why, but from your
09:48AM 24 perspective as the case agent, why did the FBI assist her
09:48AM 25 with housing? Can you just explain it for the jury?

09:48AM 1 A. Well, I mean, we needed to have her available.

09:48AM 2 Obviously, the fact that she came up here, did the trial

09:48AM 3 prep, relapsed, we had to find her, as she testified to, in a

09:49AM 4 drug house.

09:49AM 5 We were concerned that we would need her for the trial,

09:49AM 6 which was scheduled in proximity to when she came up here.

09:49AM 7 So we decided that the safest course of action would be to

09:49AM 8 put her up in a hotel pending this first -- that trial date.

09:49AM 9 Q. And then did factors related to adjournments of the trial

09:49AM 10 cause that situation to extend?

09:49AM 11 A. Extend, yeah, for a long time.

09:49AM 12 Q. Did she also make efforts on her own to obtain her own

09:49AM 13 housing?

09:49AM 14 A. Yes.

09:49AM 15 Q. Was she making efforts?

09:49AM 16 A. Yeah, she was. I mean, we started with a hotel room for

09:49AM 17 ten days. And then looking at it, a hotel room is about 110

09:49AM 18 bucks with taxes and all that. So for ten days, you're up to

09:49AM 19 1,500 bucks.

09:49AM 20 We determined, when it started getting into months, that

09:49AM 21 it would be more -- financially made more financial sense to

09:49AM 22 secure, like, a monthly rental. Because I think you can get

09:49AM 23 that for like -- we got that for, like 1,300 or 1400.

09:49AM 24 And then we were also able to then work with the property

09:50AM 25 manager that we vetted and felt comfortable with that it was

1 a safe location.

2 And then ultimately during that process, she's taking
3 efforts with Section 8 and DSS, and she was ultimately able
4 to secure her own funding or her own Section 8 voucher for
5 housing independent of us.

6 Q. Okay. I'd like to move on next to maybe K.L. We've
7 heard some testimony about the FBI making payments for, I
8 think, hotel room and rent regarding Ms. K.L.; do you recall
9 that?

10 A. Yes, I do.

11 Q. Again, was she originally scheduled to potentially
12 testify in 2023?

13 A. Yes, she was.

14 Q. And, obviously, your answers with respect to the delays
15 are similar to Ms. L.L., correct?

16 A. Correct.

17 Q. Did -- did -- did the FBI assess and determine that
18 Ms. K.L. needed a safe place to stay?

19 A. Yeah. Safe, and again, availability a big part of it.
20 We need witnesses here on the days that they're supposed to
21 be here. So having them in a safe location where you can get
22 them to court is really important for moving the trial along
23 and not missing any witness testimony.

24 Q. And just a "yes" or "no." Did Ms. K.L. express
25 reservations and safety concerns along the way?

09:51AM 1 A. Yes, a number of times.

09:51AM 2 Q. Did that factor into your assessment as to whether to
09:51AM 3 assist with --

09:51AM 4 A. Absolutely.

09:51AM 5 Q. -- her? Were payments handled by the FBI?

09:51AM 6 A. Yes. We didn't put money into her hands. We booked the
09:51AM 7 hotel room for her.

09:51AM 8 Q. And could you explain in just a couple short sentences, I
09:51AM 9 guess, why you made the decision you did to pay for housing
09:51AM 10 for Ms. K.L.?

09:51AM 11 A. Again, as I referenced, availability, the need to know
09:51AM 12 where they are, trying to find a witness who maybe doesn't --
09:51AM 13 is apprehensive about testifying, worried about their safety.
09:52AM 14 They go to friends' houses, they go to -- sometimes it takes
09:52AM 15 tremendous efforts to find these witnesses. So to have
09:52AM 16 them -- and you're always worried about their safety, as
09:52AM 17 well. So to have a secure location where you know they're
09:52AM 18 gonna be is, I feel, money well spent to secure their
09:52AM 19 testimony.

09:52AM 20 Q. And you have to get these things approved as well,
09:52AM 21 correct?

09:52AM 22 A. Yeah, this is not my --

09:52AM 23 Q. This is not coming out of Brian Burns' pocket?

09:52AM 24 A. No, not at all. They -- there's a number of levels of
09:52AM 25 approvals and -- I may suggest it, but it goes to my

09:52AM 1 supervisor, the ASAC is number two in charge, and then the
09:52AM 2 FBI headquarters actually has to agree as well, and they fund
09:52AM 3 the -- they put the money into the Buffalo office funds for
09:52AM 4 witness protection type expenses.

09:52AM 5 Q. Now I'd like to move on to P.H.

09:52AM 6 A. Certainly.

09:52AM 7 Q. Now, there are certain charges that the jury will be
09:52AM 8 asked to decide in this case about threats pertaining to
09:53AM 9 Ms. P.H.; is that right?

09:53AM 10 A. That's correct.

09:53AM 11 Q. Did you also have information regarding the event in the
09:53AM 12 bar where Jessica Leyland headlocked her?

09:53AM 13 A. Yes, we investigated that.

09:53AM 14 Q. The combination of those things and other factors, did
09:53AM 15 you assess that she needed to be housed in a safe location?

09:53AM 16 A. We were very concerned about her safety based on those
09:53AM 17 events and other people that had been in her life.

09:53AM 18 Q. And so describe the expenses and the reasons for the
09:53AM 19 expenses pertaining to Ms. P.H., just sort of at a
09:53AM 20 30,000-foot level?

09:53AM 21 A. Yeah, I mean, we obviously arrested her on the
09:53AM 22 misdemeanor drug charge. She was in an inpatient facility
09:53AM 23 for a period of time. Then she segued to an outpatient --
09:53AM 24 or, I think it's inpatient extended, I forget what they call
09:53AM 25 that. And then ultimately it got to the point where that

09:53AM 1 facility said she was ready, and we had to make a
09:53AM 2 determination.

09:53AM 3 Again the trials were being continued. So I think it was
09:54AM 4 January, we made the determination the best bet was to put
09:54AM 5 her in a very modest apartment and fund that. And, in fact,
09:54AM 6 her landlord didn't even know about her affiliation with us.
09:54AM 7 And we did that for a number of months until she relapsed,
09:54AM 8 and we determined that she stole the money, and we arrested
09:54AM 9 her again.

09:54AM 10 Q. I want to go back. You mentioned that you charged her
09:54AM 11 with a misdemeanor drug charge. Typically, is the FBI
09:54AM 12 involved in arresting drug users?

09:54AM 13 A. No. I don't think I've ever done a misdemeanor drug
09:54AM 14 charge in my career.

09:54AM 15 Q. What was -- what was the purpose behind charging Ms. P.H.
09:54AM 16 with a misdemeanor drug charge at that time?

09:54AM 17 A. So we had, you know, interacted with her earlier in the
09:54AM 18 investigation. And then she was in a, kind of, a spiral
09:54AM 19 down. And she kept committing --

09:54AM 20 Q. Let me stop you there.

09:54AM 21 When you first became aware of Ms. P.H., how was her
09:54AM 22 health compared to what you're describing as a spiral?

09:54AM 23 A. Oh, it was dramatically worse over the years of substance
09:55AM 24 abuse, and arrests, and what I would consider kind of --
09:55AM 25 people that are addicts, the kind of charges they pick up.

1 They're often caught riding in a car with drug dealers, have
2 paraphernalia, commit larcenies to fuel their drug crimes.

3 So Ms. P.H. had a series of these arrests, and we would
4 try to either get in front of her -- or, we'd get in front of
5 her at the time of the arrest. A lot of times we weren't
6 able to do that.

7 Or in the way the bail system works, she was able to get
8 bail, so she would essentially just stop showing up for her
9 next court appearances. So we'd go to the court appearance.

10 Lots of different phone numbers, different places. It
11 took a lot to actually find her.

12 Q. At one point before -- before the decision was made to
13 charge her with the misdemeanor drug charge in federal court,
14 did you in fact get in front of her and try to set her up
15 with treatment --

16 A. Yeah, we have.

17 Q. -- housing?

18 A. Yeah.

19 Q. Explain what you did.

20 A. So, I think it was -- was it '19 or so? She reached out,
21 and she had a pending case, and she was concerned about her
22 safety. And then myself and Task Force Officer Rondon had
23 actually picked her up, and we brought her to PATH, it's a --
24 it's a nonprofit, People Against Trafficking of Humans, and
25 they have a lot of resources for individuals like that. So

09:56AM 1 we brought her there.

09:56AM 2 They met not -- with us present, they met with
09:56AM 3 counselors. She met with counselors. We actually left for a
09:56AM 4 little bit, and they met and they gave her some food and some
09:56AM 5 clothing and stuff with the understanding that they were
09:56AM 6 gonna pick her up the next day and kind of continue to try to
09:56AM 7 get her some help, and then she didn't show up.

09:56AM 8 Q. And it was PATH who gave her the food and the clothing?

09:56AM 9 A. They're -- yeah, we don't. We try to, like, find
09:56AM 10 agencies that do that. I mean, obviously, the FBI's job is
09:56AM 11 to investigate crimes. And so we try to identify agencies
09:56AM 12 that can help people in those situations.

09:56AM 13 Q. And then the next day, it was set up, and she didn't show
09:56AM 14 up?

09:56AM 15 A. Yeah. The director of PATH called me and said they had
09:57AM 16 sent a van, and she didn't show up.

09:57AM 17 Q. At some point later on did you guys find her, after the
09:57AM 18 decision was made to charge her, in a drug house?

09:57AM 19 A. Yes, it took -- yes, it a few months to actually locate
09:57AM 20 her. She was kind of couch surfing.

09:57AM 21 Q. Now, the jury may have heard cross-examination at some
09:57AM 22 point from a witness regarding reimbursements for
09:57AM 23 transportation, a cross-examination about witness fees for
09:57AM 24 being in federal court, things like that.

09:57AM 25 Does the FBI have anything to do with when someone is

09:57AM 1 actually subpoenaed to court, paying witness voucher fees, or
09:57AM 2 reimbursements for travel expenses?

09:57AM 3 A. Not at all.

09:57AM 4 Q. That's -- that's done through a different entity, and
09:57AM 5 it's -- it's statutory; is that right?

09:57AM 6 A. Yeah. The statute, I mean, you get 40 bucks a day to
09:57AM 7 be -- as a witness fee, you get mileage, it's all set out in
09:58AM 8 the statute. So anyone that's a witness, obviously, not a
09:58AM 9 government witness, but anyone that's a witness that's here
09:58AM 10 is entitled to their witness fee, their -- you know, mileage,
09:58AM 11 their expenses like a daily expenses. It's all set out in
09:58AM 12 the statute. We don't really have anything to do with it
09:58AM 13 other than -- I inform the witnesses that there's -- you have
09:58AM 14 to sign some paperwork, and that the marshals at some point
09:58AM 15 will reimburse them for their expenses under this capitated
09:58AM 16 rate that's in statute.

09:58AM 17 Q. It's a nominal fee, similar to what jurors get?

09:58AM 18 A. Yeah, I think jurors get an extra ten bucks.

09:58AM 19 Q. All right. I want to switch gears now, okay?

09:58AM 20 A. Certainly.

09:58AM 21 Q. As a member of the investigative team, have you received
09:58AM 22 and reviewed and helped to isolate text messages that were
09:58AM 23 contained in Mr. Gerace's cell phone which was extracted as
09:58AM 24 part of Exhibit 310?

09:58AM 25 A. Yes, I have been involved in that.

09:58AM 1 Q. I want to hand you up Exhibit 310. That was
09:59AM 2 authenticated earlier in the trial by Special Agent Curtis
09:59AM 3 Ryan. Are you also familiar with that same thumb drive that
09:59AM 4 contains the complete extraction of Mr. Gerace's phone?
09:59AM 5 A. Very familiar.
09:59AM 6 Q. Have you worked extensively with that?
09:59AM 7 A. Yes, it's the extraction from the border search.
09:59AM 8 Q. Have you helped isolate and reviewed different text
09:59AM 9 threads that are contained on that extraction?
09:59AM 10 A. Yes, I have.
09:59AM 11 Q. When I say "text threads," I should say text messaging
09:59AM 12 threads.
09:59AM 13 A. Between Mr. Gerace and other individuals, yes.
09:59AM 14 Q. Okay. You've reviewed the extraction?
09:59AM 15 A. Yes.
09:59AM 16 Q. You've used it to further your investigation?
09:59AM 17 A. Yes, on many occasions.
09:59AM 18 Q. You've spent time reviewing the contents?
09:59AM 19 A. Yes, and carving them out.
09:59AM 20 Q. "Carving them out," meaning isolating different text
09:59AM 21 threads?
09:59AM 22 A. Yes. It's a picture of the image of your phone with all
09:59AM 23 the different people you text message, so if you want to --
10:00AM 24 you've got to identify the contact, and then pull those
10:00AM 25 particular ones. And the program does it, the imaging

1 program, so you're able to isolate just the text messages
2 between Mr. Gerace and certain individuals that we were
3 interested in.

4 Q. Have you extensively reviewed and helped to carve out or
5 scoped text threads contained in the extraction that are
6 relevant to this trial?

7 A. Yes, I spent a lot of time on that.

8 Q. Based on your familiarity with the contents of the
9 extraction, did you review and isolate text message threads
10 between the defendant and Judge John Michalski?

11 A. Yes. I reviewed those extensively.

12 Q. Did you isolate and review text message threads between
13 the defendant and Greg Trotter, an Amherst Police Department
14 detective?

15 A. Yes, I have.

16 Q. Did you isolate and review text messages threads between
17 the defendant and P.H., also known as P.R.?

18 A. Yes, I did.

19 Q. Did you isolate and review text message threads between
20 the defendant and Darryl LaMont?

21 A. Yes, I did.

22 Q. How did you identify the number of -- the phone number
23 pertaining to the text message thread that -- as Darryl
24 LaMont's?

25 A. In reviewing the text thread, it was pretty comfortable

1 it was Mr. LaMont based on the communications, and when you
2 pull them up you'll see the content of the thing. But then
3 additionally, we had never subscribed that number. We
4 never -- you can get a subpoena and get a subscriber, and we
5 had not done that.

6 And so on December 2nd, I just made a phone call to it,
7 and kind of pretended I was looking to set up a stag party to
8 that number. And the individual identified himself as
9 Darryl.

10 And I said, are you still doing parties? And he's, like,
11 yeah.

12 And I said, where's your website? He said, it's down.

13 And I essentially told him -- he indicated this was his
14 personal number, not his business one. So I knew at that
15 point it was Darryl LaMont.

16 Q. Did he ask you how you got his personal number?

17 A. Yes, he did.

18 Q. What did you say?

19 A. A dude in a bar gave it to me.

20 Q. Okay. You were talking a moment ago about the internal
21 content of the text threads as well. At one point, are there
22 indications that the person is a black male associated with
23 stag parties?

24 A. Yes.

25 Q. Are there also indications that a woman named Sunny wrote

1 a text message that said, hey, Darryl's driving so I'm
2 writing, or words to that effect?

3 A. Exactly.

4 Q. Did you also isolate and review a text message between
5 Peter Gerace and Chris Chudy?

6 A. Yes, I did.

7 **MR. FOTI:** Judge, can we approach?

8 **THE COURT:** Sure.

9 (Sidebar discussion held on the record.)

10 **MR. FOTI:** Judge, I think going forward, Mr. Tripi is
11 going to start admitting exhibits containing conversations
12 from within the phone. And we would object to any of the
13 conversations coming in at least through Mr. Burns, not
14 through the witnesses that were participants of the
15 conversation. I think it's -- setting aside just the hearsay
16 rules that I would argue, I think there's a general
17 confrontation -- constitutional confrontation issue here. I
18 can't cross-examine the participants to these conversations
19 and talk about the context, talk about what may have been
20 discussed outside of the text chain. I can't do anything with
21 this other than --

22 **THE COURT:** These are text messages between
23 Mr. Gerace and other people?

24 **MR. TRIPI:** Yeah, this is -- for example, this is
25 between Judge Michalski and Mr. Gerace, similar to what you've

1 seen between Bongiovanni and Gerace. So I would argue the
2 same arguments in response to getting in, like, the
3 Bongiovanni text thread.

4 **THE COURT:** So Gerace's, there are no issues
5 (indecipherable).

6 **MR. FOTI:** So I don't -- I don't -- I don't have an
7 objection to Bongiovanni and Gerace. In fact, I think we even
8 stipulated that in. If not, then we would have.

9 I understand that they're coconspirators.

10 In this case, we're talking about a number of
11 individuals that I don't think have been established as
12 coconspirators in the charges in this indictment. And --

13 **THE COURT:** Who?

14 **MR. FOTI:** Well, Judge Michalski, I think, is one of
15 them.

16 **THE COURT:** You don't think he's a coconspirator?

17 **MR. FOTI:** I don't. I don't think it's been
18 established yet.

19 **THE COURT:** I disagree with that.

20 **MR. FOTI:** Chris Chudy. I don't know who else
21 they're gonna put in. I think just --

22 **MR. TRIPI:** The names that I've just laid out.

23 **THE COURT:** Chudy, he's the.

24 **MR. TRIPI:** Chudy is the manager.

25 **THE COURT:** Right. Michalski.

10:04AM 1 **MR. TRIPI:** Michalski. Trotter.

10:04AM 2 **THE COURT:** Trotter is the Amherst cop.

10:04AM 3 **MR. TRIPI:** Trotter's the Amherst cop.

10:04AM 4 P.H., but only the thread that relates to Trotter.

10:04AM 5 So that is, he's talking to Trotter about where she is, and

10:05AM 6 then he's talking to P.H. about pretending he's gonna pick her

10:05AM 7 up. So he that's how the arrest gets arranged. So you see

10:05AM 8 how he's talking to one and the other.

10:05AM 9 And then Darryl LaMont. So those are the ones.

10:05AM 10 **THE COURT:** The only one I'm concerned about is P.H.

10:05AM 11 **MR. TRIPI:** And actually all of hers are actually

10:05AM 12 contained, because he's also screenshotting Trotter, and

10:05AM 13 sending the same thing he's saying to P.H., he's

10:05AM 14 screenshotting, so it's actually all in Trotter's thread.

10:05AM 15 **THE COURT:** Okay.

10:05AM 16 **MR. TRIPI:** You know?

10:05AM 17 **THE COURT:** I think they're all coconspirators.

10:05AM 18 **MR. FOTI:** I don't -- I don't know what testimony has

10:05AM 19 established Trotter as a coconspirator, other than --

10:05AM 20 actually, I can't even think of an example, because he was

10:05AM 21 involved in the arrest of individuals in this case, I don't

10:05AM 22 think that establishes him as a coconspirator particular to

10:05AM 23 anything that is charged here.

10:05AM 24 I understand he's been charged by the government

10:05AM 25 separately in regard to lying.

1 **THE COURT:** Well, no, but isn't there testimony that
2 Trotter did something in connection with the -- is it the
3 Rolex watch?

4 **MR. TRIPI:** Yeah, this is the Rolex arrest.

5 **THE COURT:** Yeah. And that he -- and that Gerace
6 reaches out to him to get her arrested for the -- the Rolex,
7 that he's got some sort of connection with him in that regard.

8 **MR. FOTI:** He was an arresting officer on that.

9 **MR. TRIPI:** May I -- I don't mean that interrupt,
10 Judge, sorry.

11 **THE COURT:** No, go ahead.

12 **MR. TRIPI:** On that score, the content of the text as
13 well as what you've heard already, you're right on it, but the
14 context show like, for example, he arrests her. And a normal
15 police officer isn't telling you what a suspect is saying as a
16 complainant realtime.

17 Gerace is saying, is she talking? What is she
18 saying? And he's responding.

19 **MR. COOPER:** And just to put a cherry on it, Judge,
20 P.H. is interviewed by federal law enforcement at Trotter's
21 department, and then all of a sudden Jessica Leyland is saying
22 I heard you talked to the feds, you're a snitch.

23 And I think there's an inference that the Court can
24 draw there on top of --

25 **THE COURT:** Yeah, certainly my instinct was that

1 Trotter was a coconspirator. I think Michalski is, as much as
2 I hate to say it, I liked John, but --

3 **MR. TRIPI:** Everybody did, Judge --

4 **THE COURT:** I know.

5 **MR. TRIPI:** -- and nobody wanted that to happen.

6 **THE COURT:** It breaks my heart.

7 **MR. TRIPI:** Yeah.

8 **THE COURT:** But I think he is. I think that Trotter
9 is. I think Chudy certainly is. And --

10 **MR. TRIPI:** Darryl LaMont.

11 **THE COURT:** -- Darryl LaMont certainly is.

12 **MR. FOTI:** Judge, no disrespect. When you say
13 "certainly," I don't know what testimony there has been that
14 Chris Chudy is a coconspirator other than he works at
15 Pharaoh's. That doesn't make him a coconspirator.

16 **THE COURT:** Isn't he one of the people that's been
17 tipped to ignore --

18 **MR. TRIPI:** He's a manager. There's been some
19 testimony I think earlier in the trial that he was one of
20 the -- it was Peter and him who had the key. At some point I
21 think somebody said that.

22 **THE COURT:** That let people upstairs.

23 **MR. TRIPI:** Yeah.

24 And then in addition to that, Judge, I think there's
25 been ample testimony about sort of the wide ranging use and

1 distribution that occurs there. I think there's an inference
2 that can be drawn based on his position in management for a
3 long time.

4 And, of course, you can also consider the text. It's
5 one text, and in this text, if you let it in, or I can show it
6 to you ahead of time, it's one text in a very long thread
7 because obviously they've texted a lot, we've isolated one
8 text, and essentially it's Chudy being sort of upset that
9 Gerace has fired someone that -- like a bartender or someone
10 that Chudy liked.

11 And in that exchange, Chudy's like, oh, but if there
12 are girls -- I'm paraphrasing -- if there are girls that party
13 with you upstairs then, then there's no problems.

14 And so right in the text, and that's what the
15 evidentiary value of it, it's showing that one of his managers
16 knows there's a separate set of rules here for the favorites,
17 so that would be the argument stemming from that.

18 **MR. SOEHNLEIN:** To the extent that there's been
19 testimony about Chudy, it's that the key to the upstairs was
20 in his pocket, and that other people would get it from him,
21 and then let -- it was Katrina that said she could get it from
22 his pocket.

23 That doesn't mean that she necessarily got it from
24 him, by the way.

25 **THE COURT:** Right.

10:09AM 1 **MR. SOEHNLEIN:** Okay. The remaining testimony about
10:09AM 2 Chudy is that he was a good manager. That he --
10:09AM 3 **THE COURT:** Fired people.
10:09AM 4 **MR. SOEHNLEIN:** -- he fired people --
10:09AM 5 **THE COURT:** What about the context of the --
10:09AM 6 **MR. SOEHNLEIN:** So also I don't understand it, how --
10:09AM 7 in what way is it trying to be --
10:09AM 8 **MR. TRIPI:** Would you like to see it?
10:09AM 9 **THE COURT:** Yeah. So why don't we do everybody
10:09AM 10 except Chudy's right now.
10:09AM 11 **MR. TRIPI:** Sure.
10:09AM 12 **THE COURT:** So Michalski, we don't have an argument
10:09AM 13 on.
10:09AM 14 **MR. FOTI:** Well, I -- I also, the majority of the
10:09AM 15 communication is not in furtherance of the conspiracy. So
10:09AM 16 even if we establish him as a coconspirator, the majority of
10:09AM 17 the communication, I went through all the text messages. Over
10:09AM 18 and over again is Judge Michalski and Peter saying do you want
10:09AM 19 to meet up for drinks? Not available this week, Sue's got
10:10AM 20 whatever going on.
10:10AM 21 I mean, it's just a ton of back and forth about
10:10AM 22 scheduling to hang out.
10:10AM 23 And I think there's, like, one message like right in
10:10AM 24 the beginning about let's get some pussy or something, with no
10:10AM 25 real context of it.

2 **MR. FOTI:** Yeah, it's like the first message. And I
3 get that that -- I guess they're arguing, there's no context
4 to it that that's a statement in furtherance of a conspiracy,
5 but that's like it, and the rest of it is just --

6 **MR. TRIPI:** Judge, our first argument, and you
7 started to sway, is that these are statements of a party
8 opponent so that none of them are hearsay.

9 Also, let's say you buy Mark's argument full cloth
10 right now that it's not a coconspirator statement. Statements
11 of a party opponent plus the conversation for context, it
12 should all come in on that analysis alone on top of it.

13 **THE COURT:** What about all this stuff they're just
14 making arrangements to get together?

15 **MR. TRIPI:** Well, face-to-face meetings are, like,
16 he's going to meet him on the bench.

17 It's not like a former law partner coming to visit
18 you or something like that. It's a strip club owner who he
19 hasn't represented since 2006 coming in 2016 and '15, like
20 right in the heart of this.

21 **THE COURT:** What's the -- what's the -- what is the
22 issue.

23 **MR. TRIPI:** Well, I think the nature and extent of
24 the relationship, you know, is -- 'cuz conspiracies don't
25 spring up out of nowhere.

10:11AM 1 They discuss Katrina Nigro. They mock her, you know?

10:11AM 2 And so we need corroborate her knowledge of this situation.

10:11AM 3 They heavily attacked her.

10:11AM 4 They talk about Shelby in a sense that it's

10:11AM 5 corroborative and confirmation of Michalski's connection to

10:11AM 6 Shelby.

10:11AM 7 **THE COURT:** I'm convinced on that. So Michalski is

10:11AM 8 okay.

10:11AM 9 **MR. TRIPI:** Yeah.

10:11AM 10 **THE COURT:** Who's next?

10:11AM 11 **MR. TRIPI:** Wherever you want to go. Darryl.

10:11AM 12 **THE COURT:** LaMont. Do you want argument there?

10:11AM 13 He's a coconspirator.

10:11AM 14 **MR. FOTI:** I don't believe he is. I think that

10:11AM 15 there's been testimony specifically saying just the only

10:12AM 16 testimony that suggests they're coconspirators is that there's

10:12AM 17 dancers that work for both. But there's also been testimony

10:12AM 18 that dancers go from club to club, that this is a normal

10:12AM 19 occurrence, that dancers in this industry move between

10:12AM 20 different stag companies, between different clubs.

10:12AM 21 The only testimony I guess that there's any type of,

10:12AM 22 I guess, collaboration between the two that goes just beyond

10:12AM 23 dancers working for both came from Katrina Nigro. I don't

10:12AM 24 think that that establishes preponderance of coconspirator.

10:12AM 25 You have the alternative testimony from A.G. who was

1 fired by Pharaoh's, who testified they are different
2 companies, they're completely different, I was fired from
3 Pharaoh's.

4 **THE COURT:** Can we do -- can we do the Michalski
5 stuff and then take a break?

6 **MR. TRIPI:** Sure, we can. Can I just argue just to
7 cap that part of the argument?

8 **THE COURT:** Yes. I'm inclined to let it all in
9 because it's admissions by, I mean, it's a statement of a
10 party opponent and context. I mean, I think that it comes in
11 for that reason.

12 **MR. FOTI:** But, Judge, that's part of my concern. I
13 said the hearsay -- there's hearsay objections here,
14 obviously. But I also have a concern about the context.
15 That's why I'm saying it goes beyond just hearsay, and it's a
16 constitutional issue, it's a confrontation issue.

17 **THE COURT:** How so?

18 **MR. COOPER:** Peter's available now to call him.

19 **THE COURT:** No, no. But how so?

20 **MR. FOTI:** Because, for example, and I do --

21 **THE COURT:** Do you have any caselaw that says if
22 you've got an exchange, a back and forth, an exchange of
23 letters, an exchange of emails, an exchange of texts between a
24 defendant and someone, only the defendant's emails come in?
25 And you don't get to put the other ones in unless you have

1 context of what the defendant is saying?

2 **MR. FOTI:** I don't have a case off the top of my head
3 to give to you, Judge.

4 **THE COURT:** Well, you knew it was coming in.

5 **MR. FOTI:** I don't know that a case like that exists.
6 And I know that we do have a constitutional right to
7 confrontation. And I've looked at the messages in
8 anticipation of today, and I -- and I am looking at these
9 messages and there's all kinds of things that there is no
10 context to.

11 There's call me, and you don't really know where the
12 conversation springs off of, what came before, what came
13 after.

14 **MR. TRIPI:** That's for argument. These two can hash
15 it out.

16 **THE COURT:** Okay. Let's go. Let's do it.

17 (End of sidebar discussion.)

18 **BY MR. TRIPI:**

19 Q. Okay. I'm going to hand you up Government Exhibit 310AE.
20 I'm going to ask you to look through it enough to familiarize
21 yourself with what it is, and look back at me when you're
22 done.

23 A. I'm familiar with it.

24 Q. Do you recognize Government Exhibit 310AE?

25 A. Yes, I do.

1 Q. What do you recognize it to be?

2 A. It's text messages between Judge John Michalski and Peter
3 Gerace from the phone extraction of 310.

4 Q. And are those accurate from the extraction, Exhibit 310?

5 A. Yes, it's a printout of them.

6 **MR. TRIPI:** The government offers 310AE, Your Honor.

7 **MR. FOTI:** Judge, we just restate the objection that
8 we discussed at the sidebar.

9 **THE COURT:** Okay. Overruled.

10 **(GOV Exhibit 310AE was received in evidence.)**

11 **MR. TRIPI:** Okay. We're going to publish those up on
12 the monitor now, Ms. Champoux. We can start with page 1,
13 please.

14 **BY MR. TRIPI:**

15 Q. Now we're going to go through a bunch of these, but we're
16 not going to go through all of them, okay?

17 A. Yes.

18 Q. Just to orient the jury to the first page, the way it's
19 extracted, IOS, iMessage, SMS, MMS. Essentially, does that
20 mean text messages?

21 A. Yes, text communications.

22 Q. Number of participants, two?

23 A. Correct.

24 Q. In the gray bubbles, would that be the number and the
25 entry of the name as it existed in the phone for Judge

1 Michalski?

2 A. In the contact, yes.

3 Q. And in the blue bubbles that you see, are those the

4 written communications for Mr. Gerace?

5 A. Yes, they are.

6 Q. Okay. Now in the conversation details of the extraction,

7 does it tell you how many text there are, or messages, I

8 should say?

9 A. Yes, 1,027.

10 Q. And what is the date range from that first message to the

11 last?

12 A. The first one is 6/10 of 2015, and it goes to April 15th

13 of 2019. The phone, I believe, was seized on April 19th or

14 April 20th. April 19th, I believe, 2019.

15 Q. If I told you April 27th, 2019, does that sound about,

16 right?

17 A. That's better, yes.

18 Q. Okay.

19 A. That's accurate.

20 Q. So the last text is about two weeks before the phone was

21 seized roughly, give or take?

22 A. Yeah. And Mr. Gerace had been out of the country for, I

23 believe, a week or so.

24 Q. Okay. I'm going to go through some of these texts.

25 On page 1, the very first text on June 10th, 2015, in the

1 gray box, can you read what Judge Michalski wrote to the
2 defendant?

3 A. You're funny. Let's get some pussy there.

4 Q. Okay. Let's go to page -- and are there responses in
5 basically -- in the same, within the same minute?

6 A. Yes. Where and when, and I want drinks.

7 **MR. TRIPI:** Okay. Let's go to page 2, Ms. Champoux.

8 **BY MR. TRIPI:**

9 Q. Generally, on this page, does it appear that they're in
10 August making arrangements to get together?

11 A. Yes, that's generally what it says.

12 Q. Are you familiar with where Judge John Michalski worked,
13 correct?

14 A. Yes, at the Erie County State Supreme Court building.

15 Well, the court's building, and it's tied to the District
16 Attorney's Office and --

17 Q. For ease of reference, I'm going to just box an exchange
18 between the two of them on August 30th. Can you just read
19 those messages?

20 A. From Judge Michalski: The middle of the week is good.

21 Mr. Gerace: Okay. Mr. Gerace: T-U-E-S I'm in court at
22 2, your building.

23 And then Michalski -- Judge Michalski indicates: I
24 should be there stop over.

25 **MR. TRIPI:** Okay. Can we go to page 7, Ms. Champoux.

25 | **MR. TRIPI:** Okay. Can we scroll down to page 14,

1 Ms. Champoux.

2 **BY MR. TRIPI:**

3 Q. You can continue reading messages on October 29th, 2015.

4 A. Let's get together next week; it's from Mr. Gerace.

5 Judge John Michalski: Okay.

6 Q. And you just read the messages third and --

7 A. Oh, correct.

8 Q. Second and third from the bottom, correct?

9 A. Correct.

10 **MR. TRIPI:** Let's go to page 15, Ms. Champoux.

11 **BY MR. TRIPI:**

12 Q. All right. I want you to read an exchange that was

13 November 3rd -- I'm sorry, yeah, November 3rd, 2015.

14 A. Okay. From Mr. Gerace: I'll be downtown at 9:15. Are
15 you on the bench then?

16 Judge Michalski: No, I am here at Medaille teaching
17 until 9:30, and then I head downtown after that.

18 And from Mr. Gerace: Okay, I was gonna say hi.

19 **MR. TRIPI:** Ms. Champoux, can we go to page 16.

20 **BY MR. TRIPI:**

21 Q. Can you just read the messages and the dates for this
22 whole page?

23 A. Certainly, so 11/8/15, it's from Mr. Gerace: Call me.

24 11/9/2015 at 4:05: Are you at work?; it's from Mr. Gerace.

25 Judge John Michalski responds: Yes.

10:21AM 1 Peter Gerace responds: Fuck, I left already.

10:21AM 2 And the bottom message: She's going to jail tomorrow.

10:21AM 3 And that's on November 9th, 2015 at 5:06.

10:21AM 4 **MR. TRIPI:** Ms. Champoux, can you scroll down so we
10:21AM 5 catch the last message in that response.

10:21AM 6 **BY MR. TRIPI:**

10:21AM 7 Q. What does Mr. Gerace say after that?

10:21AM 8 A. Call me on break.

10:21AM 9 Judge John Michalski says: Wow. Okay.

10:22AM 10 **MR. TRIPI:** And can we scroll down a little further,
10:22AM 11 Ms. Champoux. All right. We'll move on to page 19, please.

10:22AM 12 **BY MR. TRIPI:**

10:22AM 13 Q. Can you read a message November 22nd at 2015, written by
10:22AM 14 the defendant?

10:22AM 15 A. I have a paper for you.

10:22AM 16 Q. And then can you read messages on November 23rd, 2015?

10:22AM 17 A. From Mr. Gerace: Can I stop by when you get home today
10:22AM 18 for a second?

10:22AM 19 From Judge John Michalski: Sure.

10:22AM 20 **MR. TRIPI:** Ms. Champoux, let's go to page 21,
10:22AM 21 please.

10:22AM 22 **BY MR. TRIPI:**

10:22AM 23 Q. Can you read -- there's some messages that begin on
10:22AM 24 November 25th. By the way, is this UTC time that we're
10:23AM 25 seeing?

10:23AM 1 A. That's correct.

10:23AM 2 Q. So at some points in the year, and I'm terrible at it but

10:23AM 3 we have to do some math to get the correct time?

10:23AM 4 A. Yeah. And I'm not much better than you, Mr. Tripi, at

10:23AM 5 that.

10:23AM 6 Q. Basically is it minus four in the winter, and minus five

10:23AM 7 in the summer?

10:23AM 8 A. I believe that's correct. I usually use a cheat sheet.

10:23AM 9 Q. All right. So, we have a message at the top that says:

10:23AM 10 Are you home?

10:23AM 11 And there's a response: 800 maple.

10:23AM 12 Given the conversion of the time of those are both likely

10:23AM 13 on November 25th; is that fair to say?

10:23AM 14 A. That's accurate.

10:23AM 15 Q. Okay. And is this basically -- can you read the rest of

10:23AM 16 the messages for that day? Go through the 26th.

10:23AM 17 A. Yeah, John Michalski: Yeah, 800 maple.

10:23AM 18 Mr. Gerace: Is it busy.

10:23AM 19 Michalski: Kinda.

10:23AM 20 Mr. Gerace: Happy Thanksgiving.

10:24AM 21 On November 26th, I think that's it.

10:24AM 22 Q. We agree that these messages were all the 25th though?

10:24AM 23 A. That's correct, based on the UTC time.

10:24AM 24 Q. Jumping ahead to December 1st, 2015, we're gonna stick

10:24AM 25 with this portion through. Can you read the date and who

10:24AM 1 wrote a message on December 1st?

10:24AM 2 A. Yes. Mr. Gerace writes a message on 12/1: Can you call

10:24AM 3 Clarence?

10:24AM 4 **MR. TRIPI:** And, Ms. Champoux, can you just scroll

10:24AM 5 down, please.

10:24AM 6 **BY MR. TRIPI:**

10:24AM 7 Q. Now, in terms of -- in terms of Clarence, do the towns

10:24AM 8 around the Buffalo area have town courts?

10:24AM 9 A. Yes. All the towns basically have their own courts.

10:24AM 10 Q. Does Clarence have a town court?

10:24AM 11 A. They do.

10:24AM 12 Q. Okay. What's the next thing that Mr. Gerace wrote on

10:24AM 13 December 1st?

10:24AM 14 A. Peter Gerace, 4/15/67.

10:24AM 15 Q. And what did Mr. Gerace write after that?

10:24AM 16 A. 12/10, 7 p.m.

10:25AM 17 Q. Generally, do the town courts have court at night?

10:25AM 18 A. Yes, they do, generally. A couple days a week, usually.

10:25AM 19 Q. So this message is December 1st, it's talking about a

10:25AM 20 date December 10th at 7 p.m.; is that right?

10:25AM 21 A. That's correct.

10:25AM 22 Q. What's the next message Mr. Gerace writes?

10:25AM 23 A. Let me know when you're home.

10:25AM 24 Q. And what did the judge respond, Judge Michalski?

10:25AM 25 A. I don't believe he did because it's 12/1, and then it

25 | A. What address do they have for you? It would be the one

1 that appears on your license. Is that the right one?

2 Q. And is there a response by the defendant?

3 A. No, I put right one down when I mailed it.

4 **MR. TRIPI:** Ms. Champoux, can you scroll down a
5 little bit?

6 **BY MR. TRIPI:**

7 Q. What else did Mr. Gerace write after?

8 A. 95 Spring Meadow Drive, Number 5, Will, 14221.

9 Q. Is Williamsville in 14221?

10 A. Yes.

11 Q. And what did Judge John Michalski respond to that?

12 A. Perfect.

13 Q. A couple hours later, what did -- what did the defendant
14 text Judge Michalski?

15 A. Think about the other thing, please.

16 Q. Now, in text messages, we've seen nothing that would give
17 context to the "other thing" at this point?

18 A. Correct.

19 Q. About 11 days forward in time on December 21st, 2015, did
20 the defendant write Judge Michalski again?

21 A. Yes, he did.

22 Q. What did he write?

23 A. I'll stop in. What time you on bench?

24 And Judge Michalski responds: 9:30.

25 Q. Okay.

10:28AM 1 **MR. TRIPI:** Ms. Champoux, can we go to page 27,
10:28AM 2 skipping ahead a little bit in time.

10:28AM 3 Can you hover between page 26 and 27 just so I can
10:28AM 4 see the -- no, the other way. Yep.

10:28AM 5 Scroll down a little bit. Can you keep scrolling?
10:28AM 6 All right. Stop there.

10:28AM 7 **BY MR. TRIPI:**

10:28AM 8 Q. Hovering between page 28 and 29, do you see a text of a
10:28AM 9 photo?

10:28AM 10 A. Yes, I do.

10:28AM 11 Q. What's the date of that?

10:28AM 12 A. January 16th, 2016.

10:28AM 13 Q. And in the middle there, who's depicted?

10:29AM 14 A. Mr. Gerace.

10:29AM 15 Q. So the defendant?

10:29AM 16 A. The defendant, correct.

10:29AM 17 Q. And who's to the far right of the bottom of the screen, I
10:29AM 18 guess, which would be the right of the photo?

10:29AM 19 A. John Michalski. Judge John Michalski.

10:29AM 20 **MR. TRIPI:** Ms. Champoux, can we scroll down further.

10:29AM 21 **BY MR. TRIPI:**

10:29AM 22 Q. On December -- excuse me, on January 19th, 2016, does
10:29AM 23 Mr. Gerace text Judge Michalski?

10:29AM 24 A. Yes, he does.

10:29AM 25 Q. And is there a response by Judge Michalski?

1 A. Yes, there is.

2 Q. And what is that exchange?

3 A. Are you working, from Defendant Gerace.

4 And then John Michalski, on my way.

5 Q. And just to be clear, when there's reference to

6 "working," Judge Michalski is an active, acting Supreme Court

7 judge?

8 A. Yes, Court of Claims appointed full-time position as a

9 judge. State Supreme Court judge.

10 **MR. TRIPI:** Can we keep scrolling, Ms. Champoux?

11 Okay. Stop there.

12 **BY MR. TRIPI:**

13 Q. Generally, near the top here, does it appear they're --

14 that the defendant is trying to make plans?

15 A. Yes, it generally -- yes, that's what it appears to be.

16 Q. Can you read the bottom two messages on this page, on

17 January 20th, 2016, written by the defendant?

18 A. Yes. From the defendant: Wish we could squash other

19 thing. I'll stop in Tuesday a.m. if you are there about 8:45

20 a.m.

21 Q. As you reviewed these as the investigator, did that

22 indicate to you that the defendant would go visit the judge

23 at his courthouse?

24 A. There were a number of messages that were indicative of

25 that.

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Q. Now earlier in this trial, you sat here and you saw the evidence. Did the jury see a photo of Mr. Gerace in what was

1 the kitchen of Russell's restaurant?

2 A. Yes, that was an exhibit.

3 Q. Now that particular exhibit, was the defendant with other
4 individuals like P.H. and people associated with Pharaoh's,
5 correct?

6 A. Yes, exactly.

7 Q. Is Russell's -- is there a Russell's owned by Russell
8 Salvatore on Transit Road?

9 A. Yes, it is.

10 Q. Is it a restaurant with a connected hotel?

11 A. Yes, it is.

12 Q. Is Russell Salvatore someone that you interviewed in this
13 matter?

14 A. Yes, he is.

15 Q. Did you also interview sort of the manager of Russell's?

16 A. Yeah, the -- Mark Jerge, who kind of runs it. Or runs
17 the hotel, I should say, and the restaurant.

18 Q. All right. Now, a couple days later, did you see a
19 message January 26th, 2016?

20 A. Yes, I do.

21 Q. What did the defendant write there?

22 A. Will you be in 8:45 a.m.

23 **MR. TRIPI:** Can we scroll a little bit, Ms. Champoux?

24 **BY MR. TRIPI:**

25 Q. And what did Judge Michalski respond there?

1 A. Prob not.

2 **MR. TRIPI:** Okay. Can we go to page 35, please?

3 **BY MR. TRIPI:**

4 Q. All right. There's messages January 30th, February 5th,
5 8th, 10th, and 11th, 2016 on this page. Can you read those
6 messages written by the defendant on those dates?

7 A. So starting at the top from the defendant: Call me.

8 Did you think about what we talked about? Only ten
9 months left.

10 Q. Hang on there's a gap in days there?

11 A. That's correct. Yeah, February 5th.

12 First one's January 30th. The second one is
13 February 5th, 2016.

14 And then another one on February 5th, 2016.

15 A couple minutes -- three minutes later: Would make my
16 life easier.

17 And then another one on February 8th, 2016: Call me.

18 February 10th, 2016, with a question mark.

19 And then February 11th, 2016 with: H-E-L-L-O-O-O-O.

20 All from the defendant Judge Michalski.

21 **MR. TRIPI:** Can we move to page 39, Ms. Champoux?

22 **BY MR. TRIPI:**

23 Q. There's some messages here on March 4th from the
24 defendant to Judge Michalski; is that right?

25 A. That's correct.

10:34AM 1 Q. Can you read those for the jury?

10:34AM 2 A. From the defendant: Call me. I'm going out with Lillo

10:34AM 3 Brancato tonight. I'll be at Russell's.

10:35AM 4 Q. Okay. I'm gonna stop you there.

10:35AM 5 Has the jury seen a photo of this defendant and the actor

10:35AM 6 Lillo Brancato together?

10:35AM 7 A. Yes, they have.

10:35AM 8 Q. And I'll be at Russell. Again, there's a restaurant

10:35AM 9 Russell's Steaks, Chops & More on Transit Road?

10:35AM 10 A. The same one I previously discussed.

10:35AM 11 Q. Okay. And what's the last message there?

10:35AM 12 A. At 6.

10:35AM 13 Q. Okay. So obviously, we've got to do some math there

10:35AM 14 because that text is at 10:14 p.m., correct?

10:35AM 15 A. Yes.

10:35AM 16 Q. That's UTC time?

10:35AM 17 A. That is UTC, yes.

10:35AM 18 Q. All right.

10:35AM 19 **MR. TRIPI:** Let's jump ahead to page 49.

10:35AM 20 **BY MR. TRIPI:**

10:35AM 21 Q. I want to look at the messages at the bottom of the

10:36AM 22 screen, April 28th, 2016. Can you read those exchanges for

10:36AM 23 the jury?

10:36AM 24 A. From Mr. Gerace: Can you talk?

10:36AM 25 And Judge Michalski: Sure.

1 Q. And this was reviewed earlier in the trial, but there are
2 phone calls between Mr. Gerace and Mr. Michalski through
3 Mr. Gerace's phone records, correct?

4 A. That's correct.

5 **MR. TRIPI:** Let's go to page 50, Ms. Champoux.

6 **BY MR. TRIPI:**

7 Q. I want to focus you in on an exchange on May 20, 2016.

8 Can you read that?

9 A. That's from the defendant: You coming to parents' 50th?

10 From Judge Michalski: Yes.

11 Q. Did the defendant respond to yes?

12 A. He responded with: Thanks.

13 **MR. TRIPI:** Let's move on to page 51.

14 **BY MR. TRIPI:**

15 Q. On June 2nd, 2016, is there an exchange?

16 A. There is.

17 Q. Can you read that for the jury?

18 A. From the defendant: Can you renew parents' vows that
19 night, please?

20 From Judge Michalski: Sure.

21 **MR. TRIPI:** Can you scroll up just a little bit,
22 Ms. Champoux. Or the other way, I guess, down for you.

23 **BY MR. TRIPI:**

24 Q. This particular photo of this fish, did you also see that
25 photo in a text thread between the defendant and

1 Mr. Bongiovanni?

2 A. Yes, I did.

3 **MR. TRIPI:** Let's jump ahead to page 56,

4 Ms. Champoux. Sorry, we need to hover on 55. There we go.

5 **BY MR. TRIPI:**

6 Q. Can you read the exchanges on July 17th, 2016?

7 A. Yes. From July 17th, 2016, from the defendant to Mr. --

8 or, Judge Michalski: Call me later or tomorrow. I have a

9 question.

10 Judge Michalski gives a thumbs up emoji.

11 Mr. Gerace: If you're around in a bit, I have to stop

12 and ask you something.

13 Judge Michalski gives a thumbs up.

14 And then the next exchange is on -- is from the defendant

15 on July 18th, 2016.

16 **MR. TRIPI:** Can you scroll a little, Ms. Champoux?

17 **BY MR. TRIPI:**

18 Q. Go ahead.

19 A. C.C., 1/22/85.

20 And a thumbs up from Judge Michalski.

21 Q. And C.C., she's a witness who testified in this case?

22 A. Yes.

23 Q. Does that appear to be her date of birth that's texted

24 next to her name?

25 A. That is her date of birth.

1 Q. And that's followed up by a thumbs up emoji --

2 A. That's correct.

3 Q. -- by the judge?

4 And what does the defendant respond?

5 A. Thanks. Keep me posted.

6 **MR. TRIPI:** Let's scroll to the next page, 57, and
7 continue with this discussion. Stop there.

8 **BY MR. TRIPI:**

9 Q. And do you see another text from the judge, from Judge
10 Michalski on July 19th, 2016?

11 A. Yes, I do.

12 Q. And what does it say?

13 A. Peter Todoro is working on an adjournment for Friday.

14 Q. Do you know who Peter Todoro is?

15 A. He's a defense attorney and, I believe, cousins with the
16 defendant.

17 Q. And Judge Michalski's the one writing that Peter Todoro
18 is working on an adjournment for Friday?

19 A. That's correct.

20 Q. What did the defendant respond?

21 A. Okay. Thanks.

22 Q. And then earlier we talked about town court judges or
23 town courts?

24 A. Yes.

25 Q. Again, do town courts have jurisdiction for traffic

1 offenses and certain misdemeanor offenses?

2 A. Yes. I think they might do a felony initial appearance,
3 but predominantly misdemeanors and traffic violations.

4 **MR. TRIPI:** Can we keep scrolling Ms. Champoux. Keep
5 going down.

6 **BY MR. TRIPI:**

7 Q. Okay. I'd like to focus you in on a message from the
8 defendant September 2nd, 2016. It's on the bottom of page
9 58.

10 A. From the defendant to Judge Michalski: Do you know
11 Officer Trotter?

12 **MR. TRIPI:** Can we scroll to the next page,
13 Ms. Champoux?

14 **BY MR. TRIPI:**

15 Q. And what did Judge Michalski respond to that?

16 A. Yes. Good guy.

17 Q. And what did the defendant reply?

18 A. Him and Judge Klein got me order of protection against
19 Katrina. He's a great guy. Took great care of me.

20 Q. And what's the date of that message?

21 A. December 22nd, 2016.

22 Q. And did Judge Michalski respond on September 2nd, 2016?

23 A. About a minute later, Judge Michalski responds: Yes,
24 agreed. Geoff Klein, too.

25 **MR. TRIPI:** Now, Ms. Champoux, can we side by side

1 with this page Exhibit 467?

2 **BY MR. TRIPI:**

3 Q. All right. So, if we look at the exhibit on the right,
4 the purported marriage between the defendant and Katrina
5 Nigro was on September 18th, 2014; is that right?

6 A. That's correct.

7 Q. Almost two years before this text exchange about the --
8 Trotter and the protective order against Katrina, right?

9 A. That's accurate.

10 **MR. TRIPI:** You can take 467 down.

11 Continue with the texts. Stop there. Stop there.

12 I'm sorry. Let me catch up with my eyes.

13 **BY MR. TRIPI:**

14 Q. All right. At the top of the page, September 2nd, 2016,
15 what did Judge Michalski write?

16 A. September 2nd, 2016, at the top?

17 Q. At the top.

18 A. Yes, agreed. Geoff Klein, too.

19 Q. And what did the defendant reply to that, yes, agreed,
20 Geoff Klein too?

21 A. I don't know him. I have to meet prosecutor next week.

22 Q. And what did Judge Michalski respond?

23 A. The thumbs up emoji.

24 **MR. TRIPI:** Scroll down a little bit, Ms. Champoux.

25 If we could, I'd like to keep going down to page 62.

1 Let's go to page 64, I'm sorry.

2 **BY MR. TRIPI:**

3 Q. Okay. Can you look at the top message there, and read
4 that?

5 A. From Defendant Gerace: See you tomorrow.

6 Q. And what's the date of that?

7 A. September 17th, 2016.

8 Q. Okay. But if you're applying the UTC time, it's really
9 written September 16th; is that right?

10 A. Yes, that's accurate.

11 Q. Okay. And then is the next message on September 19th,
12 2016?

13 A. Yes, it is.

14 Q. And does appear to be a screenshot of the text -- a
15 screenshot of something from social media, photo?

16 A. Yes. It appears to be a screenshot from social media.

17 **MR. TRIPI:** Can you scroll down a little bit,
18 Ms. Champoux.

19 **BY MR. TRIPI:**

20 Q. All right. And do you recognize the people depicted in
21 the screenshot?

22 A. Yes, I do.

23 Q. Can you read the screenshot and tell us who the people
24 are?

25 A. Happy 70th to the best dad in the world. John Michalski,

1 can you get out of the picture?

2 Q. And who are the people in this picture, that shot?

3 A. Mr. and Mrs. Gerace, as well as John Michalski.

4 Q. And is Judge Michalski to the far left?

5 A. Yes, he is.

6 **MR. TRIPI:** Let's scroll down further. Keep
7 scrolling, Ms. Champoux. I'll let you know when to stop. All
8 right. On September 19th, let's stop here. Page 66.

9 **BY MR. TRIPI:**

10 Q. Can you continue sort of the communications on
11 September 19th, 2016, from the top of the page and go through
12 the bottom?

13 A. Certainly. Yeah. So from the defendant, Mr. Gerace: We
14 will do again soon.

15 From Judge Michalski: It was nice to see Anthony too.

16 From Mr. Gerace: Yes, he not around much. LOL. My
17 parents were so happy u and Sue came.

18 Q. Let me stop you there. Does Judge Michalski have a wife
19 named Sue or Susie?

20 A. Yes.

21 Q. Keep going.

22 A. From Judge Michalski: They are great.

23 From Mr. Gerace: I wanted you there for 50th wed ann and
24 70th B day.

25 **MR. TRIPI:** Scroll to the next page, please,

1 Ms. Champoux.

2 **BY MR. TRIPI:**

3 Q. Okay. I'd like to focus you in on now, jump ahead in
4 text message time, to October 26th, 2016. Can you read those
5 messages?

6 A. From Mr. Gerace: Are you in? I'm on the fifth floor.

7 And then from Judge Michalski: On trial.

8 And from Mr. Gerace: Okay.

9 And then --

10 Q. There's a gap?

11 A. Yeah, there's a gap.

12 **THE COURT:** Mr. Tripi, we have a juror who needs a
13 break.

14 **MR. TRIPI:** Oh, I do too. That's great.

15 Thank you.

16 **THE COURT:** Let's take a break. Please remember my
17 instructions. Don't talk about the case, even with each
18 other. Don't make up your minds. See you back here in about
19 15 minutes.

20 (Jury excused at 10:46 a.m.)

21 **THE COURT:** Anything for the record before we break?

22 **MR. FOTI:** No, Judge.

23 **MR. TRIPI:** No, thank you.

24 **THE COURT:** Great.

25 **THE CLERK:** All rise.

10:47AM 1 (Off the record at 10:47 a.m.)

10:47AM 2 (Back on the record at 11:02 a.m.)

11:02AM 3 (Jury not present.)

11:02AM 4 **THE CLERK:** All rise.

11:02AM 5 **THE COURT:** Please be seated.

11:02AM 6 **THE CLERK:** We are back on the record for the jury
11:02AM 7 trial in case numbers 19-cr-227 and 23-cr-37, United States of
11:02AM 8 America versus Peter Gerace Jr.

11:02AM 9 All counsel and parties are present.

11:02AM 10 **THE COURT:** Okay. So I've thought about this, and
11:02AM 11 I've looked at a little bit of the law. And I think I'm
11:03AM 12 correct that the texts all come in with respect to context
11:03AM 13 because they're Mr. Gerace's texts, and the texts of the other
11:03AM 14 person come in for context.

11:03AM 15 But that means that the other person's texts don't
11:03AM 16 come in for the truth of what is stated.

11:03AM 17 So I think I need to tell the jury that these texts
11:03AM 18 are coming in, that the texts are coming in because of the
11:03AM 19 defendant's texts, that the texts of the other person are
11:03AM 20 being put in just for context to show Mr. Gerace's state of
11:03AM 21 mind.

11:03AM 22 If there are specific texts that the government
11:03AM 23 believes are in furtherance of -- I haven't seen many, I've
11:03AM 24 seen a couple that you might argue are in furtherance of the
11:03AM 25 conspiracy, and I do think that Judge Michalski is a

1 coconspirator. If there are texts that come in substantively
2 because they are in furtherance of the conspiracy, I'll
3 consider that from the government and instruct the jury on
4 that. But I think that they all come in for context.

5 **MR. TRIPI:** Rather than sort of wasting time now,
6 would you be amenable to me getting through it, and then
7 circling back and having argument if there are certain ones
8 that should come in substantively?

9 **THE COURT:** Sure. Yeah.

10 **MR. TRIPI:** Is that okay?

11 **THE COURT:** Do you want to say anything about that?

12 **MR. FOTI:** No, I'm fine with that.

13 **THE COURT:** Yeah. And I think that's how they come
14 in. I think that -- I think that the in furtherance standard,
15 though, is a pretty high standard. Statements that are made
16 in furtherance of the conspiracy.

17 **MR. TRIPI:** So there might be a couple, Judge, and I
18 don't want to drug us into the muck right now, but there might
19 be a couple. Like, for example, where it's -- I was with
20 Shelby last night, and the judge just says ha ha ha. That's
21 not even -- that's not even an assertion of anything, so we
22 can argue whatever inferences we want from that. I'm just
23 using one example.

24 **THE COURT:** Yeah. So I was thinking, and I was
25 talking with Rebecca about this, I was thinking that maybe the

1 ones where Michalski seems to be helping him out might -- I
2 don't think they are, I don't think they're in furtherance of
3 the conspiracy, so -- especially given the standard. So --

4 **MR. TRIPI:** I'll go back and look, and if I have
5 other arguments, like if it's a present sense --

6 **THE COURT:** Great. Okay. Are you still thinking you
7 might be done by noon?

8 **MR. TRIPI:** I'm gonna try to hoof it, yeah. I'm
9 gonna try.

10 **THE COURT:** Anything more for the record?

11 **MR. TRIPI:** No, Judge.

12 **THE COURT:** Anything for the record?

13 **MR. FOTI:** Judge, I guess, in all of those
14 conversations that the government tends to offer and that the
15 Court is going to accept over objection, one separate
16 conversation -- excuse me.

17 **THE COURT:** Are you talking about substantively?

18 **MR. FOTI:** No, just accept it for context under
19 the -- within the limits that the Court has indicated --

20 **THE COURT:** Yeah.

21 **MR. FOTI:** -- it would accept it.

22 There is a conversation that I have particular
23 concern about, particularly if it's just being offered for
24 that purpose, which is the communication with LaMont -- oh,
25 I'm sorry, I think I just referenced a former client. Darryl

1 LaMont. The -- there's communication in there where it
2 clearly -- the inference, and I imagine that the jury will
3 draw this, is that they're -- they're joking. But it could be
4 offensive that the -- the comments made to Peter Gerace are
5 things along the lines of are black people allowed at your
6 golf tournament? And there's an LOL at the end of it,
7 suggesting that it's a joke. And then Mr. Gerace, in the text
8 message responds, no, LOL. And then the follow-up response
9 is, I gotta my Tiger Woods on.

10 And it's clearly -- there's -- it's a joke, but
11 there's racial implications to the joke that could be
12 offensive. Particularly --

13 **THE COURT:** Is that coming in?

14 **MR. TRIPI:** It's in the text thread, Your Honor. I
15 wasn't gonna highlight it. It's not one that I planned to
16 stop on and talk about.

17 But I guess there is some corroboration as to the
18 golf outings, so, you know --

19 **THE COURT:** I get it. But on 403, I don't think -- I
20 think I'm gonna -- I'm not going to a through in.

21 **MR. TRIPI:** So, yeah, I'll certainly skip over it,
22 let me just make sure I have it flagged.

23 **THE COURT:** And we can -- and we can --

24 **MR. TRIPI:** I can redact it later.

25 **THE COURT:** Yeah, redact it, please. I think that's

1 right. I think that there's -- there's a chance that that
2 could be taken as offensive. I understand what you're saying,
3 Mr. Foti, I think it probably was a joke, I don't think it's
4 offensive, but a juror might.

5 **MR. FOTI:** There's two instances that I can think of.
6 There's that one, and then at the very end of the exhibit I
7 believe there's one that was along the lines of did you have
8 any black people at your birthday party, something like that.

9 **THE COURT:** Same thing.

10 **MR. TRIPI:** I don't know where that one is. Can you
11 help me to find it?

12 **MR. FOTI:** Yeah, I think I have it.

13 **THE COURT:** Same thing.

14 **MR. FOTI:** I think it's at the very end.

15 **THE COURT:** We don't need to do this now. We'll do
16 this during a break, right? But I'm going to keep both out,
17 we're gonna redact those.

18 **MR. FOTI:** Understood.

19 **THE COURT:** Anything else in particular, Mr. Foti,
20 you have a problem with?

21 **MR. FOTI:** So the other one is a little bit more
22 complicated. It's not race implicated, but there's the
23 comment of Peter Gerace says the message is, you took one of
24 my best weekend girls.

25 And my understanding is that was an expression of

11:08AM 1 frustration.

11:08AM 2 The response back is, again, I think a joke, but I
11:08AM 3 understand why the government would want to offer it, because
11:08AM 4 he says something like, and she today's anal, LOL.

11:08AM 5 **MR. TRIPI:** Yeah. I don't care about the LOL at the
11:08AM 6 end of that, Judge. We definitely think that's a
11:08AM 7 coconspirator statement. It's talking about a specific sex
11:08AM 8 act done by a specific woman. And it shows an intimate level
11:09AM 9 of knowledge. And it shows the flow of personnel between
11:09AM 10 Pharaoh's and No Limit Entertainment.

11:09AM 11 I think that's the whole -- if there's one text in
11:09AM 12 that whole thread, that's the most important text. So --

11:09AM 13 **THE COURT:** How is it in furtherance of the
11:09AM 14 conspiracy?

11:09AM 15 **MR. TRIPI:** Because it's in furtherance of the
11:09AM 16 conspiracy because they're talking about personnel. They're
11:09AM 17 talking about personnel, a woman --

11:09AM 18 **THE COURT:** How is LaMont involved in the conspiracy
11:09AM 19 at Pharaoh's?

11:09AM 20 **MR. TRIPI:** All right. So we've had plenty of
11:09AM 21 testimony about women who have a nexus between both.

11:09AM 22 **THE COURT:** Right.

11:09AM 23 **MR. TRIPI:** Personnel working for each of them.

11:09AM 24 **THE COURT:** Yes.

11:09AM 25 **MR. TRIPI:** Sex acts occurring in each location.

2 | **MR. TRIPI:** You heard E.H. say Peter Gerace

9 In this context, there are also multiple instances
0 where they're discussing Shelby, they're also discussing other
1 people in this text thread. It's LaMont saying --

15 **MR. TRIPI:** Well, hang on. Is a sex-trafficking
16 conspiracy. There are no walls and silos placed up. It's a
17 sex-trafficking conspiracy.

21 I guess I would go back to your Sauce/Gander
22 Doctrine, Judge. It extends beyond Pharaoh's walls.

23 And so when it's good to sort of impeach a witness,
24 it comes in, but when it's clearly Darryl LaMont -- just
25 yesterday he was identified in the photo as Scooter as someone

1 who the judge -- who Gerace helped arrange heroin for L.L.

2 and so she can't work if she's --

3 **THE COURT:** Let me think about it. Let me think
4 about that one. Let me think about that.

5 We'll keep going. And let me think about that one.

6 Pat, let's bring them back in, please.

7 I'm sorry, Mr. Foti.

8 **MR. FOTI:** No, that's it.

9 **THE COURT:** Okay, let's bring them back in.

10 **MR. TRIPI:** I thought the Sauce/Gander Doctrine
11 should be documented.

12 **THE COURT:** I know what you meant.

13 **MR. TRIPI:** I was trying to be funny, not offensive,
14 Judge. I hope you didn't take offense.

15 **THE COURT:** No, I get it.

16 (Jury seated at 11:12 a.m.)

17 **THE COURT:** Welcome back, folks. The record will
18 reflect that all our jurors are present.

19 So I want to explain something to you.

20 There are a bunch of text messages that are coming in
21 now obviously. Mr. Gerace's text messages come in for the
22 truth of the text messages because they are the defendant's
23 text messages.

24 The other person in the text message exchange is not
25 here to testify. So those text messages are coming in only to

1 give context to Mr. Gerace's text messages. In other words,
2 they're not being admitted for the truth. If there are
3 statements of fact in those text messages, they're not being
4 admitted for the truth of it. They're simply being admitted
5 to show Mr. Gerace's state of mind so you can understand
6 Mr. Gerace's state of mind in the context of the text message
7 discussion that's going back and forth. Okay? Not for the
8 truth, just to show Mr. Gerace's state of mind and for
9 context. Got it?

10 **JURORS:** Got it.

11 **THE COURT:** Great. Good.

12 I remind the witness he's still under oath.

13 Mr. Tripi, you may continue.

14 **MR. TRIPI:** We're back to Exhibit 310AE. We left off
15 at page 67. Let move on to page 83, please.

16 Could we scroll down to page 84, please? Sorry about
17 that. Keep going.

18 **BY MR. TRIPI:**

19 Q. Can you read a message from Mr. Gerace from December 27,
20 2016?

21 A. Our new house, signing tomorrow.

22 Q. Did that text occur after a couple about it that had sort
23 of photos of houses?

24 A. Yes.

25 Q. Interiors of houses?

11:14AM 1 A. Yes.

11:14AM 2 Q. Is there a response by Judge Michalski?

11:14AM 3 A. Spectacular.

11:14AM 4 Q. And what did the defendant respond to that?

11:14AM 5 A. I love it, John. It took me a long time to get to this
11:14AM 6 point.

11:14AM 7 **MR. TRIPI:** Okay. Let's move forward to page 87,
11:14AM 8 Ms. Champoux.

11:14AM 9 **BY MR. TRIPI:**

11:14AM 10 Q. Okay. I'd like you to read what the defendant wrote on
11:15AM 11 January 4th, 2017.

11:15AM 12 A. LOL. I was with Shelby -- or, I was w Shelby.

11:15AM 13 Q. "W" meaning with?

11:15AM 14 A. With, correct.

11:15AM 15 Q. Okay. And what did Mr. Gerace write after that?

11:15AM 16 A. He asked --

11:15AM 17 Q. And what did Judge Michalski respond?

11:15AM 18 A. Ha ha ha ha ha ha ha.

11:15AM 19 Q. And is the ha ha ha within a minute of the text?

11:15AM 20 A. Yes.

11:15AM 21 Q. LOLs w Shelby?

11:15AM 22 A. Yes.

11:15AM 23 Q. Within two minutes; is that right?

11:15AM 24 A. Yes, that's accurate.

11:15AM 25 Q. And remind the jury who Shelby is?

1 A. Shelby Johnston, she was a dancer at Pharaoh's.

2 Q. And has the jury also observed a photo of her with other
3 Pharaoh's dancers with Darryl LaMont earlier in the trial?

4 A. Yes, we have, that's an exhibit.

5 Q. Okay. Can you read or describe the text message that was
6 sent on --

7 **MR. TRIPI:** Scroll a little bit, please.

8 **BY MR. TRIPI:**

9 Q. Describe the text message that was sent from Mr. Gerace
10 on January 5th, 2017 to Judge Michalski.

11 A. It's a screenshot of a booking photo of Ms. Katrina
12 Nigro.

13 Q. And just to describe it a little further, it has her
14 face, mugshot, with date intake time?

15 A. That's correct.

16 Q. And also has her personal identifying information, age,
17 height, weight?

18 A. That's correct.

19 Q. It has a description of the charges?

20 A. Criminal contempt.

21 Q. And what bond she had?

22 A. That's on there, as well. 5,000.

23 **MR. TRIPI:** Can you scroll a little bit further.

24 **BY MR. TRIPI:**

25 Q. What's the immediate response by the judge?

1 A. Wow.

2 Q. Okay. And what did Mr. Gerace respond after -- the
3 defendant respond after that?

4 A. Lied to judge today.

5 **MR. TRIPI:** Can you keep scrolling, Ms. Champoux?
6 Next page?

7 **BY MR. TRIPI:**

8 Q. What did Mr. Gerace, the defendant, write after that?

9 A. Goes back in two weeks. When they get Verizon records,
10 then she gets her 2nd charge.

11 Q. That's all January 5th still?

12 A. That's correct.

13 Q. What did Judge Michalski write after that?

14 A. 34 minutes later, Judge Michalski responds: Unbelievable.

15 Q. Okay. Is this roughly two years before Ms. Nigro would
16 have her own vehicular assault case pending in front of Judge
17 Michalski?

18 A. Yeah, about two years.

19 **MR. TRIPI:** Let's go to page 91. Let's go to page 95
20 actually. Let's go through these messages on March 15th,
21 please.

22 **BY MR. TRIPI:**

23 Q. Can you read what the judge wrote and what defendant's
24 response is?

25 A. Called and left VM.

1 Gerace responds: Thanks. She got a week plus \$5,000
2 bail.

3 **MR. TRIPI:** Can you scroll through the next page,
4 which would be page 96, Ms. Champoux?

5 **BY MR. TRIPI:**

6 Q. And what is -- describe what that text is.

7 A. Again, it's an -- appears to be a booking photo with some
8 personal identifying information, as well as the charges and
9 bond.

10 **MR. TRIPI:** Can you scroll down further Ms. Champoux?

11 **BY MR. TRIPI:**

12 Q. And what did -- what was Judge Michalski's immediate
13 response?

14 A. Ha ha ha ha ha ha.

15 Q. And is there another message about nine days later on
16 March 25th, 2017?

17 A. Yes, there is.

18 Q. And what is that one?

19 A. It's, again, a booking photo with intake date, and
20 then --

21 Q. What's the intake date?

22 A. March 22nd.

23 **MR. TRIPI:** Please scroll down, Ms. Champoux.

24 **THE WITNESS:** Personal identifying information, as
25 well as the charges.

25 | A. In until April 17th. And then the second text, finally.

1 Q. What did Judge Michalski respond to that?

2 A. Give her enough rope, and dot, dot, dot.

3 **MR. TRIPI:** Let's jump ahead to page 108. Let's go
4 up a little bit, Ms. Champoux, see the picture.

5 All right. Scroll back down, I apologize.

6 We'll go to page 135.

7 **BY MR. TRIPI:**

8 Q. On July 15th, 2018, is there a series of texts? Would
9 you read those?

10 A. From the defendant to Judge Michalski: Call when you get
11 a minute. Every --

12 And then the second message: Carmen Abinati.

13 Q. Is that somebody's name?

14 A. That is.

15 Q. Continue.

16 A. Abinati. And then female.

17 **MR. TRIPI:** Scroll down a little bit, Ms. Champoux.

18 **BY MR. TRIPI:**

19 Q. Does Judge Michalski ask a question here?

20 A. Yes, he does.

21 Q. And what's his question?

22 A. Hey, Pete, does Carmen have a scheduled court date this
23 week?

24 The defendant responds: No. I think they gave her to
25 the 20th to just show up on Wednesday. S-R-Y. Just saw

1 message.

2 Q. And does Judge Michalski respond?

3 A. Yes, he does.

4 Q. What does he say?

5 A. Judge Michalski states: Have her go tomorrow and talk to
6 the prosecutor.

7 Q. Now in those town courts that we talked about earlier,
8 are there prosecutors who work in those buildings?

9 A. Yeah, town prosecutors.

10 **MR. TRIPI:** Can we scroll down a little further.

11 **BY MR. TRIPI:**

12 Q. And after Judge Michalski said have her go to court
13 tomorrow and talk to the prosecutor, what did the defendant
14 write?

15 A. Okay. What should she say. Should she say anything?

16 Are you on the bench right now?

17 Q. And what did Judge Michalski respond?

18 A. Yes.

19 And Mr. Gerace responds: What time do you get off the
20 bench? I'm downstairs closing on my house.

21 Q. Is the Erie County Clerk where they -- where house
22 closings are, is that the same building that the Supreme
23 Court judges sit in?

24 A. Yeah. The clerk's office is in the basement, and then
25 the judges are in the higher floors, depending on which

1 building they're in.

2 Q. And what did the defendant write after he said what time

3 do you get off the bench, I'm downstairs closing on my house?

4 A. I can shoot up.

5 Q. Okay. Those are all on July 27th, those last messages

6 that you read?

7 A. That's correct.

8 **MR. TRIPI:** Okay. Let's move forward to page 144.

9 Let's scroll down to 145 please.

10 **BY MR. TRIPI:**

11 Q. Okay. Can you review the messages that you see on the

12 screen from September 17th, 2018?

13 A. Certainly. From the defendant: What's up? Just got

14 back from Vegas last night. Calling to see what you're

15 doing.

16 Judge Michalski: On bench. Will call later.

17 Mr. Gerace: Okay.

18 And then there's an invitation to a party at Pharaoh's

19 Gentlemen's Club, or a screenshot picture of it.

20 **MR. TRIPI:** Can we scroll down to page 146,

21 Ms. Champoux.

22 **BY MR. TRIPI:**

23 Q. In response to the screenshot of the invitation to the

24 Pharaoh's event -- by the way, for record purposes, on that

25 screenshot, are there two women minimally dressed?

11:24AM 1 A. Yes.

11:24AM 2 Q. What does Judge Michalski respond to that?

11:24AM 3 A. Yum.

11:24AM 4 **MR. TRIPI:** Let's go to page 151, Ms. Champoux.

11:24AM 5 Let's go hover between 150 and 151.

11:24AM 6 All right. Let's go to 153.

11:24AM 7 **BY MR. TRIPI:**

11:24AM 8 Q. Can you tell us, can you review the messages from

11:24AM 9 October 16th that I've indicated? October 16th, 2018.

11:24AM 10 A. From the defendant: How is November 4 for you and Sue.

11:24AM 11 From Judge Michalski: I'm going to be in Columbus, Ohio
11:24AM 12 that weekend.

11:24AM 13 Mr. Gerace responds: How about the 11th.

11:25AM 14 And Judge Michalski responds: That's great.

11:25AM 15 Q. About two days later, does the defendant text Judge

11:25AM 16 Michalski another name?

11:25AM 17 A. Yes.

11:25AM 18 Q. And what is that name?

11:25AM 19 A. Angela Dingledey.

11:25AM 20 Q. Is that someone you're aware of through this

11:25AM 21 investigation?

11:25AM 22 A. Yes.

11:25AM 23 Q. Was she interviewed?

11:25AM 24 A. Yes.

11:25AM 25 Q. Was she a Pharaoh's dancer?

11:25AM 1 A. She was.

11:25AM 2 Q. And after texting the name Angela Dingledey, what -- what
11:25AM 3 else did the defendant follow up with with the judge?

11:25AM 4 A. I sent the last of her paperwork over today.

11:25AM 5 And the judge responds: Okay.

11:25AM 6 Q. All right. Stop there.

11:25AM 7 Did Judge Michalski then follow up in that conversation
11:25AM 8 on October 25th, 2018?

11:25AM 9 A. Yes, he did.

11:25AM 10 Q. What did he say to the defendant?

11:25AM 11 A. Hey, Peter. I made contact with the Buffalo Drug Court,
11:25AM 12 and my contact is telling me Angela is not in that drug
11:25AM 13 court.

11:25AM 14 Q. Does Buffalo City Court have a drug court?

11:26AM 15 A. Yes, they do.

11:26AM 16 Q. Judge Michalski did not work at Buffalo City Court,
11:26AM 17 correct?

11:26AM 18 A. He did not, he worked in State Supreme Court.

11:26AM 19 Q. On October 25th, 2018, was there another name texted by
11:26AM 20 the defendant?

11:26AM 21 A. Camilla Archibald.

11:26AM 22 Q. And what did Judge Michalski respond?

11:26AM 23 A. That's who I spoke to.

11:26AM 24 **MR. TRIPI:** Scroll down, Ms. Champoux.

11:26AM 25 Stop there. Let's go to page 161.

1 Can you go up a little bit further? All right. Stop
2 there. Let's go to page 165.

3 Can you hover between 164 and 165.

4 **BY MR. TRIPI:**

5 Q. Okay. Do you see another text of that same photo we saw
6 earlier on November 9th, 2018?

7 A. That's correct.

8 **MR. TRIPI:** Can we scroll down, Ms. Champoux?

9 **BY MR. TRIPI:**

10 Q. On November 10th, can you read that exchange?

11 A. The art of fisting.

12 From Judge Michalski: Ha ha ha ha ha ha.

13 **MR. TRIPI:** And can we go to page 178. Can you
14 scroll down, Ms. Champoux?

15 **BY MR. TRIPI:**

16 Q. Can you describe the text from Judge Michalski to the
17 defendant February 19th, 2019?

18 A. Yeah, it's a Tim Horton's cup with a Roll Up the Rim
19 promotion, and then the words, blow job, fellatio.

20 Q. Now you're familiar with the Tim Horton's company. They
21 do those type of promotions where you roll up the rim and you
22 can win a cup of coffee?

23 A. Yeah, I'm familiar with those.

24 Q. They don't really have those types of offerings?

25 A. Not that I saw. Not that I've ever seen.

11:28AM 1 **MR. TRIPI:** Okay. Let's scroll down a little bit

11:28AM 2 further. Let's go down. All right. I think that's it with

11:28AM 3 this one. We'll take that down.

11:28AM 4 **BY MR. TRIPI:**

11:29AM 5 Q. All right. So in that text thread, did you see a

11:29AM 6 reference to Shelby Johnson?

11:29AM 7 A. Yes, I did.

11:29AM 8 Q. Did you see multiple references to Katrina Nigro?

11:29AM 9 A. Yes, I did.

11:29AM 10 Q. And those references to Katrina Nigro were all before she

11:29AM 11 had a pending case in front of Judge Michalski?

11:29AM 12 A. Yes, her case was in 2019.

11:29AM 13 Q. And were those references all after the purported

11:29AM 14 marriage in 2014?

11:29AM 15 A. Yes, they were.

11:29AM 16 Q. Another text thread that you reviewed and isolated out of

11:29AM 17 the extraction was with Detective Greg Trotter; is that

11:29AM 18 right?

11:29AM 19 A. That's correct.

11:29AM 20 Q. I'm going to hand you up Government Exhibit 310AT.

11:29AM 21 Do you recognize that?

11:29AM 22 A. Yes, I do.

11:29AM 23 Q. What do you recognize it to be?

11:29AM 24 A. A text string, text message exchanges between the

11:30AM 25 defendant, Mr. Gerace, and Amherst Detective -- I think it's

1 Detective Sergeant Greg Trotter.

2 Q. Have you read that numerous times?

3 A. Yes, many times.

4 Q. Is Exhibit 310AQ accurate from the extraction of the cell
5 phone that's Exhibit 310?

6 A. Yes. Those are the carved-out messages between the two
7 of them.

8 Q. Are they accurate?

9 A. They are.

10 **MR. TRIPI:** The government offers 310AQ.

11 **MR. FOTI:** No objection.

12 **THE COURT:** Yeah, so folks, the same thing applies
13 here. These are the defendant's text messages, they come in
14 for the truth. And the other person's text messages do not
15 come in for the truth, they come in only to give you an idea
16 of the context and the defendant's state of mind. Okay?

17 And with that instruction, Mr. Foti, there's no
18 objection?

19 **MR. FOTI:** Correct.

20 **THE COURT:** Okay. So it's admitted without
21 objection.

22 **(GOV Exhibit 310AQ was received in evidence.)**

23 **MR. TRIPI:** Thank you, Your Honor.

24 Could we pull up Exhibit 310AQ? Okay.

25

25 | Q. Okay. And at the time of these messages, Greg Trotter

1 was a detective at the Amherst Police Department?

2 A. That's correct.

3 Q. Okay.

4 A. He might have been detective sergeant, but certainly an
5 officer.

6 **MR. TRIPI:** Can we go to the next page, Ms. Champoux?

7 I'm sorry, go back to page 1 real quick.

8 **BY MR. TRIPI:**

9 Q. I need you to read the message right under the first
10 message.

11 A. Is this your new number? I keep sending you messages and
12 I get no response.

13 Q. Okay. Go to the next page, can you read the message from
14 Trotter, December 20th, 2018?

15 A. Yeah, sorry, thought you had this one.

16 Q. And continue reading the December 20th messages.

17 A. From the defendant: No, I have it now. Keep in touch.
18 We got to get a drink.

19 From Trotter, Mr. Trotter: Absolutely. Let's get a
20 drink soon. What time you hanging out up there till tonight?

21 From the defendant: Usually 10 or 11. I started at 9
22 this morning.

23 Q. And at this point in time, the defendant is running
24 Pharaoh's Gentlemen's Club; is that right?

25 A. That's accurate.

1 Q. Okay. In terms of some events that the jury's heard
2 about, was Mr. Trotter the arresting officer of P.H.?

3 A. Yes, he was one of them.

4 Q. Was he the arresting officer for several arrests of
5 Katrina Nigro?

6 A. Yes, he was.

7 **MR. TRIPI:** Let's go to the next page.

8 **BY MR. TRIPI:**

9 Q. Can you read the second-to-last message on January 22,
10 2019 from the defendant to Trotter?

11 A. We've got to have a drink soon. We never got together
12 during the holidays.

13 **MR. TRIPI:** Let's go to next page.

14 **BY MR. TRIPI:**

15 Q. Can you read the second message in gray from Trotter on
16 January 25th, please?

17 A. Hey, buddy. Sorry. Forgot to text back the other day.
18 Let's make this happen soon. I'm working nights next week,
19 so probably the following week.

20 Q. All right. After that text about drinks -- or,
21 withdrawn -- about his schedule, do they sort of move into
22 discussion of a police report that was filed regarding the
23 Rolex watch that the jury's heard about?

24 A. Yes, they do.

25 Q. I want you to read the last message on that page,

1 March 6, 2019, at the bottom of the page?

2 A. Yes. This is from defendant Gerace: Because the pawn
3 shop and Vegas Metro Police said that Amherst Police have to
4 get ahold of them and give them the report in order for them
5 to make sure the watch is still there.

6 Q. Right above that, the defendant asks: Do you happen to
7 see the police report; is that right?

8 A. That's accurate.

9 **MR. TRIPI:** All right. Let's go to the next page.

10 **BY MR. TRIPI:**

11 Q. Can you read the very top message at that page in gray
12 from the Detective Trotter?

13 A. I did not. Jeff Gilbert got assigned the case, and will
14 get ahold of you tomorrow or Friday.

15 **MR. TRIPI:** Let's go to the next page.

16 **BY MR. TRIPI:**

17 Q. Do you recognize generally what's depicted in this
18 message from March 6th, 2019?

19 A. Yes, I do.

20 Q. And generally what is that?

21 A. It's the backyard to Mr. Gerace's house.

22 Q. Or --

23 A. Luxor Lane.

24 Q. Is it similar to what is his yard ended up looking like?

25 A. Yes.

1 Q. Do you know if that's a rendering or the actual photo?

2 A. I think it's a rendering.

3 Q. Okay.

4 A. Similar, I'm sorry.

5 Q. And what's the message under that from Mr. Gerace to

6 Detective Trotter say?

7 A. And a water slide in between the water falls. You have

8 to come over this summer.

9 Q. And what was the response from the detective?

10 A. Come over, question mark? Looks like I'll be moving in,

11 exclamation point, exclamation point.

12 **MR. TRIPI:** Ms. Champoux, I'd like to move forward.

13 Let me get you the page, though, okay?

14 Okay. Can we move to messages on March 7th, 2019.

15 It's several pages, though. Sorry, I don't have a page number

16 for you. That's where I want to go. Thank you.

17 **BY MR. TRIPI:**

18 Q. All right. Can you read the two messages basically in

19 the middle of the page for March 7th?

20 A. From the defendant to Trotter: Any luck at all with the

21 watch?

22 From Mr. Trotter: Still working on it. Where was the

23 engraving on the watch?

24 **MR. TRIPI:** Can we go forward about two pages?

25 All right. Stop there. We need to hover between

pages 13 and 14, I'm sorry.

THE WITNESS: Right there.

BY MR. TRIPI:

Q. All right. Can you read from the bottom of page 13 through the middle of page 14?

A. Sure. From the defendant: Any luck yet? And is he going to be going to pick her up soon?

From Detective Trotter: I wasn't there today. I'll talk with him tomorrow.

From the defendant: Yeah, I just want to make sure that it is still at the pawn shop and her picked up.

MR. TRIPI: Keep scrolling down just a little bit, Ms. Champoux.

BY MR. TRIPI:

Q. If you can continue reading those messages?

A. From Detective Trotter: Can't pick her up until we deal with Vegas.

From the defendant: Cool. Have a good weekend.

Q. All right. I'd like to forward a couple pages, maybe two pages forward. Can you read the message March 11th, 2019?

A. From the defendant: She took more stuff from my house I found out. Michael Kors jacket, Crystal got back. Woman's facial tools, electric. Couple hundred dollars for them. And a pair of girlfriend's American Eagle jeans. Let me know if we have to do a separate report.

11:38AM 1 Second message: Call you in about 20 minutes.

11:38AM 2 **MR. TRIPI:** Go to the next page, Ms. Champoux.

11:38AM 3 **BY MR. TRIPI:**

11:38AM 4 Q. All right. Can you read the response from Mr. Trotter on

11:38AM 5 March 11?

11:39AM 6 A. In court this morning. Pawn shop has a Rolex in their

11:39AM 7 inventory that they are shipping to the main store tomorrow.

11:39AM 8 When they get it, they will send pictures of it to us. No

11:39AM 9 need for a new police report.

11:39AM 10 **MR. TRIPI:** Can you go forward about two pages,

11:39AM 11 Ms. Champoux? Looking for a message March 22nd, 2019.

11:39AM 12 **BY MR. TRIPI:**

11:39AM 13 Q. Okay. Can you read this message, March 22nd, 2019, from

11:39AM 14 the defendant to Trotter?

11:39AM 15 A. Where's my invite to Florida? LOL.

11:39AM 16 **MR. TRIPI:** And can you scroll down to the next page,

11:39AM 17 Ms. Champoux.

11:39AM 18 **BY MR. TRIPI:**

11:39AM 19 Q. Can you read the response to that, Special Agent Burns?

11:39AM 20 A. Yes. From Detective Trotter: Sorry, invited Katrina

11:39AM 21 this time, and a couple little emoji faces.

11:39AM 22 Q. What are the little emoji faces?

11:39AM 23 A. I think little laughy ones.

11:39AM 24 Q. And what's the response from the defendant?

11:40AM 25 A. Ha ha ha ha ha. Yes, she said you called her 100 times

1 yesterday. LOL.

2 Q. And what's the response from Trotter?

3 A. Ha ha ha ha ha.

4 **MR. TRIPI:** Scroll down a little bit, Ms. Champoux.

5 **BY MR. TRIPI:**

6 Q. What did the defendant say next?

7 A. Have a great time. Let me know when you get back. We'll
8 grab a drink.

9 Q. And what did Trotter respond?

10 A. Sounds good. Thanks, bud.

11 **MR. TRIPI:** And after that, scroll down just a little
12 bit. Okay.

13 **BY MR. TRIPI:**

14 Q. On March 27th, did the defendant text Trotter again?

15 A. Yes, he did: Do you know if my watch came in yet?

16 And Detective Trotter responds: According to Jeff, not
17 yet.

18 Q. Is Jeff a reference to Jeff Gilbert, another Amherst
19 detective that you've interviewed?

20 A. Yes, it is.

21 Q. Okay. Now, I want to get into April 9th, 2019. Is that
22 the day that Ms. P.H. was arrested?

23 A. Yes, it was.

24 Q. All right.

25 **MR. TRIPI:** Let's scroll down to messages April 9th,

2019, Ms. Champoux. We can stop there.

BY MR. TRIPI:

Q. All right. Can you begin with the message April 9th, 2019, with UTC time of 12:55, which I think is earlier in the morning that day, right?

A. Correct.

Q. How many hours earlier, do you know?

A. Three?

Q. Three is definitely not right.

A. No.

Q. It's either four or five?

A. Four or five. I have a cheat sheet when I do it.

Q. All right. You don't have your cheat sheet?

A. I don't have my cheat sheet.

Q. Okay. Give me one second.

Would it be fair to say daylight savings is minus four, and not daylight savings it's minus five?

A. That's accurate.

Q. Okay. April 9, 2019, what's the defendant text?

A. 251 Oak Ridge Road.

Q. Where is that located, do you know?

A. It's on Grand Island.

Q. What else did the defendant write after that?

A. She's there right now.

Q. And what did he write after that?

1 A. 251 Oak Ridge Road, Grand Island.

2 **MR. TRIPI:** Ms. Champoux, can we scroll to the next
3 page? Stop there.

4 **BY MR. TRIPI:**

5 Q. Continue with the text please.

6 A. Right near that pizza place, she thinks I'm going to pick
7 her up at 9:30.

8 Continues. Let me know if you're going to get her. She
9 will be there. She doesn't know where she's spending the
10 night.

11 Q. In context, are they discussing P.H.?

12 A. Yes. She was arrested in the vicinity there, and there's
13 a business Say Cheese Pizza that's in proximity to Oak Ridge.

14 Q. After those, what does Mr. Trotter write?

15 A. I'll call you in a couple.

16 Q. What's the defendant say?

17 A. Okay. Because I don't know where she'll be tomorrow.

18 And: Are you almost there?

19 **MR. TRIPI:** Okay. Let's go to the next page,
20 Ms. Champoux. We're on to page 24.

21 **BY MR. TRIPI:**

22 Q. Are these texts, are they all basically within minutes of
23 each other that you're reading?

24 A. Yes.

25 Q. All right. What does Detective Trotter say next?

1 A. We have her.

2 Defendant responds: Okay. Did she admit it?

3 Q. Hang on. Let's -- is that a question?

4 A. We have her, is his statement.

5 Q. Okay. And then after that from Mr. Gerace, he writes?

6 A. Okay.

7 Q. And then after that, what does he say?

8 A. Did she admit it?

9 Q. Okay. And this is, the context is they're discussing the
10 arrest of -- for the watch, right?

11 A. That's correct.

12 Q. And what does Trotter say?

13 A. Not at all.

14 Q. In your law enforcement training and experience, when
15 you're interviewing or attempting to interview a suspect, do
16 you give realtime updates to a civilian?

17 **MR. FOTI:** Objection.

18 **THE WITNESS:** No.

19 **THE COURT:** Objection. Basis for the objection?

20 **MR. FOTI:** Judge, I think I'd have to argue. Can we
21 approach?

22 **THE COURT:** Come on up.

23 (Sidebar discussion held on the record.)

24 **MR. FOTI:** I -- I -- I'm objecting because this is
25 not a lay opinion. I think he's being called to generally

1 essentially gave expert opinion as law enforcement. And we're
2 talking about two very different types of law enforcement.
3 They're different jurisdictions, states, federal, his
4 training, he's been trained in Quantico specifically on FBI
5 tactics. I don't think he can talk about what type of
6 training Mr. Trotter's received, whether this is typical
7 practice, whether this is inappropriate, whether it's a
8 violation of protocols for Amherst Police Department to stay
9 in contact with a victim, whether anything along those lines
10 is inappropriate.

11 I understand why Mr. Tripi is asking it, and I
12 understand that there's a relationship to the extent that
13 they're all law enforcement. But putting that all under one
14 umbrella and making him an expert as to whether Mr. Trotter
15 was doing anything inappropriate I think goes too far.

16 **THE COURT:** I'm also very concerned about the
17 2nd Circuit's instruction not to allow folks to be a fact
18 witness and an expert witness.

19 **MR. TRIPI:** I think we've briefed this issue in terms
20 of 701. It was in my original trial brief. And it's a lay
21 opinion as to whether a law enforcement officer shares law
22 enforcement information with a civilian.

23 All of the arguments that Mr. Foti has raised, I
24 think those are more appropriately directed towards weight and
25 he can argue to the jury.

11:46AM 1 **THE COURT:** I'll tell you, I don't think so.

11:46AM 2 **MR. TRIPI:** Okay.

11:46AM 3 **THE COURT:** Because, so, and I've let this stuff in
11:46AM 4 when it's with respect to DEA policy. I've let DEA agents
11:46AM 5 testify with respect to DEA policy.

11:46AM 6 This is him testifying about an opinion as to what's
11:46AM 7 appropriate for law enforcement across the board. And I think
11:46AM 8 that is more akin to an expert opinion, not a lay opinion.

11:46AM 9 I think you need some expertise on that. And because
11:46AM 10 he has now -- you know, if he were an Amherst cop, I might
11:46AM 11 say -- I might let him testify that's our policy, that's our
11:46AM 12 procedure. But he's not.

11:46AM 13 And I think this is, therefore, an expert opinion,
11:47AM 14 and I'm not going to let it in.

11:47AM 15 **MR. TRIPI:** I think it's -- I think there at least is
11:47AM 16 fair argument on summation that Mr. Cooper can make along the
11:47AM 17 same lines of what I was trying to draw out.

11:47AM 18 **THE COURT:** I'm not saying --

11:47AM 19 **MR. TRIPI:** I don't want him to be precluded from
11:47AM 20 arguing that.

11:47AM 21 **THE COURT:** No, no, no.

11:47AM 22 Would you suggest that he can't argue that?

11:47AM 23 **MR. FOTI:** No, I think the argument is fair game.

11:47AM 24 **MR. TRIPI:** Okay. I just want to make sure that's
11:47AM 25 good.

11:47AM 1 (End of sidebar discussion.)

11:47AM 2 **THE COURT:** So the objection is sustained, and the
11:47AM 3 jury will strike the answer if there was an answer, I think
11:47AM 4 there might have been.

11:47AM 5 **BY MR. TRIPI:**

11:47AM 6 Q. After Detective Trotter wrote not at all, did Mr. Gerace
11:47AM 7 follow up 13 seconds later?

11:47AM 8 A. Yes, he did.

11:47AM 9 Q. And what did Mr. Gerace ask?

11:47AM 10 A. Does she know that you have the receipt from Vegas?

11:47AM 11 Q. And within that same minute, what did Detective Trotter
11:47AM 12 say?

11:47AM 13 A. She knows nothing.

11:47AM 14 **MR. TRIPI:** Let's go to the next page.

11:48AM 15 **BY MR. TRIPI:**

11:48AM 16 Q. And does Mr. -- the defendant respond after that?

11:48AM 17 A. Yes.

11:48AM 18 Q. What did he write?

11:48AM 19 A. Oh, okay.

11:48AM 20 Q. And what was Detective Trotter's next text?

11:48AM 21 A. What was the number she was texting from? Mr. -- go
11:48AM 22 ahead.

11:48AM 23 Q. And what did the defendant respond?

11:48AM 24 A. An email.

11:48AM 25 Q. Just continue going down the page.

11:48AM 1 A. Yep. Detective Trotter says: What email?

11:48AM 2 And then there's a screenshot with an email,

11:48AM 3 P.K.222@Yahoo.

11:48AM 4 And some text communication on the screenshot: Is he

11:48AM 5 gonna let you leave?

11:48AM 6 Q. Let me stop you there for a second, let me ask a

11:48AM 7 question.

11:48AM 8 You've also reviewed the texts from Ms. P.H. this same

11:48AM 9 day, texts between Ms. P.H. and Mr. Gerace; is that correct?

11:48AM 10 A. That's correct.

11:48AM 11 Q. To contextualize this, and maybe just to save a little

11:48AM 12 bit of time, in the one thread with Ms. P.H., was

11:49AM 13 Defendant Gerace acting as though he was going to come to

11:49AM 14 Grand Island and pick her up?

11:49AM 15 A. Him or send somebody.

11:49AM 16 Q. Okay. Are some of these now that we're looking at

11:49AM 17 screenshots from the texts that were happening simultaneously

11:49AM 18 with Ms. P.H.?

11:49AM 19 A. Yes, they are.

11:49AM 20 **MR. TRIPI:** Okay. We can just scroll down,

11:49AM 21 Ms. Champoux, and give the jury a chance to look.

11:49AM 22 **BY MR. TRIPI:**

11:49AM 23 Q. In this screenshot, the gray bubbles there are now

11:49AM 24 Ms. P.H., and the blue bubbles are the defendant?

11:49AM 25 A. That's right.

24 If we can keep scrolling down, Ms. Champoux. Go to
25 the next page. All right.

11:50AM

1

BY MR. TRIPI:

11:51AM

2

Q. Can you read those messages that I've indicated from

11:51AM

3

April 9th. We're on page 30 of the exhibit now.

11:51AM

4

A. From the defendant: If you open it up, you can see it

11:51AM

5

was sent from an email.

11:51AM

6

Detective Trotter: Got it, thanks.

11:51AM

7

From the Defendant Gerace: P.K.222@yahoo.com.

11:51AM

8

From Detective Trotter: She'll be spending the night.

11:51AM

9

From Gerace: I'm sure when she ends up seeing the

11:51AM

10

receipt, she will remember real quick.

11:51AM

11

And then a second message: Thank you.

11:51AM

12

Q. And when Trotter writes she'll be spending the night, is

11:51AM

13

that consistent, Ms. P.H. was held overnight?

11:52AM

14

A. That's accurate.

11:52AM

15

MR. TRIPI: Okay. We can take that down. Thank you.

11:52AM

16

BY MR. TRIPI:

11:52AM

17

Q. I'm going to hand you up Government Exhibit 310AL-1. Do

11:52AM

18

you recognize those?

11:52AM

19

A. Yes, I do.

11:52AM

20

Q. What do you recognize them to be?

11:52AM

21

A. They're text communications between the P.K.222@yahoo.com

11:52AM

22

email, as well as the Mr. Gerace from the extraction.

11:52AM

23

Q. Are they accurate from the extraction?

11:52AM

24

A. Yes, they are.

11:52AM

25

MR. TRIPI: Judge, the government offers

1 Exhibit 310AL-1.

2 **THE COURT:** Any objection with the same admonition?

3 **MR. FOTI:** No.

4 **THE COURT:** Okay. So, same admonition folks. I
5 won't repeat it again, but you understand.

6 You're okay with that, Mr. Foti, without repeating it
7 again.

8 **MR. FOTI:** Yes.

9 **THE COURT:** Thank you.

10 **BY MR. TRIPI:**

11 Q. And we're not going to go through these, but the
12 screenshots and the other half of the conversation, just to
13 summarize it, where Mr. Gerace was indicating he or someone
14 was going to come pick P.H. up from that address in Grand
15 Island, those are contained in here?

16 A. That's correct.

17 Q. All right. Earlier you indicated that you also reviewed
18 a text thread between the defendant and Darryl LaMont; do you
19 recall that?

20 A. Yes, I do.

21 Q. I'm going to hand you up Government Exhibit 310AS. Just
22 ignore the tabs, those are for me.

23 A. Okay.

24 Q. The --

25 A. I'm familiar with it.

1 Q. Do you recognize Government Exhibit 310AS?

2 A. Yes, I do.

3 Q. What is that?

4 A. Those are text communications between the defendant and
5 Darryl LaMont.

6 Q. What's the phone number associated with LaMont?

7 A. It's 716-310-1799.

8 Q. And are those accurate from the extraction of the
9 defendant's phone?

10 A. They are.

11 **MR. TRIPI:** The government offers Exhibit 310AS,
12 Your Honor.

13 **MR. FOTI:** Judge, we had some argument earlier, and
14 there was one issue that I think was unresolved.

15 **THE COURT:** Okay. So with the same admonition, other
16 than that one issue, do you have an objection to these coming
17 in?

18 **MR. FOTI:** Yes.

19 **THE COURT:** You do?

20 **MR. FOTI:** Oh, no. No. Other than that one issue,
21 no.

22 **THE COURT:** Okay. So these are coming in, and we
23 will talk -- before you get do that one --

24 **MR. TRIPI:** Okay.

25 **THE COURT:** -- come up and talk about it.

1 But these are being admitted with the same
2 admonition. The defendant's are coming in because they're the
3 defendant's, but the other ones just come in for his state of
4 mind and context.

5 **MR. TRIPI:** Thank you. All right.

6 **(GOV Exhibit 310AS was received in evidence.)**

7 **MR. TRIPI:** Can we pull up the first page just to
8 give an idea of the number of texts and the duration,
9 Ms. Champoux?

10 **BY MR. TRIPI:**

11 Q. Again, blue boxes indicate Mr. Gerace's text, and the
12 gray box would be Darryl LaMont with the phone number that
13 you personally verified?

14 A. Correct.

15 Q. And the number of messages, is that 118 messages between
16 March 6th, 2017 and April 18th of 2019?

17 A. Yes.

18 Q. Okay. I just want to look at a couple of them.

19 **MR. TRIPI:** Let's go to page 2, Ms. Champoux.

20 **BY MR. TRIPI:**

21 Q. Does this -- is this the same screenshot, one of the
22 screenshots that we saw with -- of the -- sort of the mugshot
23 of Katrina Nigro? The jury just saw this same screenshot on
24 the Michalski thread; is that right?

25 A. Yeah, same screenshot.

11:55AM 1 **MR. TRIPI:** Okay. And scroll just the next two
11:56AM 2 pages.

11:56AM 3 **BY MR. TRIPI:**

11:56AM 4 Q. There's a couple of them sent, correct?

11:56AM 5 A. That's correct.

11:56AM 6 **MR. TRIPI:** All right. I'd like to scroll down to
11:56AM 7 the next page.

11:56AM 8 **BY MR. TRIPI:**

11:56AM 9 Q. At the bottom there, is -- March 26th, 2019, is there a
11:56AM 10 text of a photo of Shelby Johnson to Peter Gerace?

11:56AM 11 A. Yes, there is.

11:56AM 12 **MR. TRIPI:** Scroll down a little bit.

11:56AM 13 And is there message -- stop, please. Thank you.

11:56AM 14 **BY MR. TRIPI:**

11:56AM 15 Q. And is there written content under the photo?

11:56AM 16 A. Shelby is coming back to work in two weeks.

11:56AM 17 Q. Okay. And what did Mr. Gerace respond?

11:56AM 18 A. Cool.

11:56AM 19 **MR. TRIPI:** All right. Ms. Champoux, can you scroll
11:56AM 20 a couple of pages? I'm looking at a message June 17th, 2017.

11:57AM 21 Thank you.

11:57AM 22 **BY MR. TRIPI:**

11:57AM 23 Q. On June 17th, 2019, 5:03 p.m., does Mr. LaMont write a
11:57AM 24 message to the defendant?

11:57AM 25 A. Call me back. It's important.

11:57AM 1 **MR. TRIPI:** Judge, can we get an -- as I'm going
11:57AM 2 through it, can we just get an instruction that it's a
11:57AM 3 directive so the admonition doesn't apply --

11:57AM 4 **THE COURT:** So --

11:57AM 5 **MR. TRIPI:** -- if you that would be appropriate,
11:57AM 6 Judge.

11:57AM 7 **THE COURT:** Call me back.

11:57AM 8 **MR. TRIPI:** Call me back, it's important.

11:57AM 9 **THE COURT:** Mr. Foti, that is a directive.

11:57AM 10 **MR. FOTI:** No objection.

11:57AM 11 **THE COURT:** Right? No objection?

11:57AM 12 **MR. FOTI:** Sure.

11:57AM 13 **THE COURT:** So that's a direction. So, obviously,
11:57AM 14 there's no truth of the matter, so you can consider that for
11:57AM 15 the substance of it that it was a direction. Okay.

11:57AM 16 **MR. TRIPI:** Thank you, Judge.

11:57AM 17 All right. Ms. Champoux, can we down the screen for
11:57AM 18 the jury for just a moment?

11:57AM 19 It's just for us now? Ms. Champoux, can you get me
11:57AM 20 to a message June 2nd, 2018. All right. I got it.

11:58AM 21 And could we resume the screen for the jury now?

11:58AM 22 **THE CLERK:** All set.

11:58AM 23 **MR. TRIPI:** Thank you.

11:58AM 24 **BY MR. TRIPI:**

11:58AM 25 Q. Can you read that exchange on June 2, 2018, between

1 Mr. LaMont and the defendant.

2 A. From Mr. LaMont: Bringing a new girl that never danced
3 before. I just hired her. I'm going to introduce her to
4 staff, so she can get a tour, dot, dot, dot, after stags.

5 Q. Just break that message down, Mr. LaMont runs No Limit
6 Entertainment?

7 A. Yes, an escort service, stag party service.

8 Q. Okay. And at Pharaoh's Gentlemen's Club, women perform
9 exotic dances; is that right?

10 A. That's correct.

11 Q. And does Pharaoh's Gentlemen's Club have a staff?

12 A. Yes. Yes. Definitely.

13 Q. What does Defendant Gerace respond to that?

14 A. Okay. Cool. Thanks.

15 Q. Give me just a moment, please.

16 **MR. TRIPI:** Can we take the screen down for the jury
17 one moment?

18 **THE CLERK:** All set.

19 **MR. TRIPI:** Ms. Champoux, can you get me to a
20 message, at the top of the page it will be July 15th, 2018.
21 Okay. Stop there.

22 **THE CLERK:** Back up.

23 **MR. TRIPI:** We can go back up for the jury.

24 **BY MR. TRIPI:**

25 Q. Special Agent Burns, can you read the exchanges on

11:59AM 1 July 15th that are indicated on page 15, please?

11:59AM 2 A. From Darryl LaMont: There's a limo of 25 coming to the
11:59AM 3 club in 45, dot, dot, dot.

11:59AM 4 Need bottle service plus a booth, dot, dot, dot.

11:59AM 5 They're coming from Falls.

12:00PM 6 From Defendant Gerace: I'll see if anything is

12:00PM 7 available. I'm away. Tell them to see Nick.

12:00PM 8 Q. Okay. Stop there for a second.

12:00PM 9 Are you familiar with and have -- has a manager/employee
12:00PM 10 of Pharaoh's been interviewed with the first name Nick?

12:00PM 11 A. Yes.

12:00PM 12 Q. What's Nick's last name?

12:00PM 13 A. Oh, Ciechalski. I'm not pronouncing it properly, but --

12:00PM 14 Q. Please continue.

12:00PM 15 A. The name, and what, from Mr. Gerace.

12:00PM 16 Q. And did LaMont respond at the end there?

12:00PM 17 A. Okay.

12:00PM 18 **MR. TRIPI:** And scroll just to the top of the next
12:00PM 19 page. Maybe a little bit further down.

12:00PM 20 **BY MR. TRIPI:**

12:00PM 21 Q. Can you continue reading the July 15th exchanges?

12:00PM 22 A. From Mr. Gerace: It's under your name.

12:00PM 23 From Mr. LaMont: I'm already gone. They don't know to
12:00PM 24 put it under my name, and I know they are going to Pharaoh's.
12:00PM 25 Not sure if it's going to be their first stop but they will

1 for sure be there.

2 Sent by Sunny because Darryl is driving.

3 Q. And then does Mr. Gerace respond?

4 A. He does. I told the guys 30 to 45 minutes, like you
5 said. What is the name, because that's -- that's -- because
6 that he saved a VIP section for them.

7 From Mr. LaMont: His name is Harry.

8 **MR. TRIPI:** Ms. Champoux, can we down the screen
9 again for the jury please. And, Ms. Champoux, can you get me
10 to a message January 23rd, 2019 please. It should be the
11 second or third page from the end.

12 Okay. Let's go -- all right. Let's -- sorry, I need
13 a date and time. Thank you. So we're scrolling between
14 page 21 and 22. Ms. Champoux, can you -- can we have the jury
15 view the screen, please?

16 **BY MR. TRIPI:**

17 Q. On January 23rd, 2019, did Mr. LaMont send a picture of a
18 woman to Mr. Gerace?

19 A. Yes, he did.

20 **MR. TRIPI:** Can you scroll down a little further,
21 Ms. Champoux.

22 **BY MR. TRIPI:**

23 Q. Underneath the photo, what did Mr. LaMont write?

24 A. New girl I just hired. Sending her to Pharaoh's Friday
25 morning for a dancing job, dot, dot, dot. Her name is

12:02PM 1 Amanda.

12:02PM 2 Q. Okay. Now Darryl LaMont doesn't own Pharaoh's, right?

12:02PM 3 A. He does not.

12:02PM 4 Q. The defendant did, right?

12:02PM 5 A. Yes, he did.

12:02PM 6 Q. Okay. And what does the defendant respond when

12:02PM 7 Mr. LaMont writes, new girl I just hired, sending her to

12:02PM 8 Pharaoh's Friday morning for a dancing job. Her name Amanda?

12:02PM 9 A. He responds: Okay. Let me know. I'll be there.

12:02PM 10 Q. And what does Mr. LaMont respond?

12:02PM 11 A. She will be there at noon.

12:02PM 12 Q. I'm going to hand you up the hard copy. And just read

12:03PM 13 out loud and stop when you get to sort of the Post-It Notes

12:03PM 14 that I'm putting on the page okay?

12:03PM 15 **THE COURT:** Can we take this down now?

12:03PM 16 **MR. TRIPI:** Absolutely.

12:03PM 17 **THE COURT:** Can we post for me what --

12:03PM 18 **MR. TRIPI:** Yeah.

12:03PM 19 **THE COURT:** -- what you're looking at?

12:03PM 20 **MR. TRIPI:** Yes. For the judge and the parties only,

12:03PM 21 can we move to the last page, Ms. Champoux.

12:03PM 22 And, Judge, we're reading that.

12:03PM 23 **THE COURT:** Okay.

12:03PM 24 **BY MR. TRIPI:**

12:03PM 25 Q. Just to sort of complete the exchanges about that woman

1 that was in the photo on January 25, 2019, can you read how
2 they finished that conversation between Mr. LaMont and the
3 defendant?

4 A. From Mr. LaMont: Amanda won't be in until a little later
5 to try out, dot, dot, dot.

6 She has an appointment that came up that she has to be
7 at, dot, dot, dot.

8 I'll be in around 4 myself.

9 **MR. TRIPI:** Judge, sort of the last thing on this is
10 the one message we needed to argue further about.

11 **THE COURT:** Okay. So should we break for lunch now?

12 **MR. TRIPI:** Yeah, Judge. I think I can be done in
13 the next 30 minutes, so I think it's a good time to break for
14 lunch, and that's about how much I think, 30 to 35 minutes,
15 I'll be finished.

16 **THE COURT:** Okay. So let's take a relatively short
17 lunch break. Let's take 45 minutes. Please remember my
18 instructions. Don't talk about the case, don't communicate
19 about it with anyone. Don't use tools of technology to learn
20 anything about the case or to communicate about the case. If
21 there's any news coverage of the case on TV or the radio or
22 newspaper or internet or anywhere else, don't read or watch or
23 listen to it. And don't make up your mind until you start
24 deliberating.

25 We'll see you back here at about a quarter to 1.

1 Thanks.

2 (Jury excused at 12:05 p.m.)

3 **THE COURT:** Okay. Should we do the argument now?

4 **MR. COOPER:** Sure, Judge.

5 **THE COURT:** Should we excuse the witness?

6 **MR. COOPER:** Yes, please.

7 Get out of here, Brian.

8 **THE COURT:** Mr. Burns, we haven't really been
9 admonishing you because you know don't talk to anybody.

10 **THE WITNESS:** Certainly.

11 **THE COURT:** Okay.

12 **MR. TRIPI:** I think I'm gonna let Mr. Cooper handle
13 this one.

14 **THE COURT:** And can we put it up on the screen so I
15 can see the exchange?

16 **MR. TRIPI:** Yeah. Karen, it's October 26th, 2017.

17 I'll just try to circle them for you, Judge.

18 Those are the two, Judge.

19 **MR. COOPER:** So, will you let me know when you're
20 ready for the argument, Judge?

21 **THE COURT:** Yeah, I'm ready.

22 **MR. COOPER:** Okay. So first of all, in terms of
23 relevance, which I think it's obvious, it's notice to the
24 defendant that Darryl LaMont has this woman engaging in some
25 kind of sex acts. At a minimum, the low bar of relevance

1 here, Darryl LaMont is informing the defendant on a text
2 message that the woman engaged in anal sex.

3 So, and I want to set aside for a moment what I
4 expect Mr. Foti to say is that this is a joke. He can argue
5 it's a joke, and if the defendant wanted to, and obviously
6 it's his choice, he can get up and claim it's a joke.

7 But the words written on the paper indicate that the
8 woman engaged in a sex act, specifically anal sex.

9 And the notice to this defendant that LaMont was
10 using women to get them to engage in sex acts is at issue in
11 this case, which charges a sex-trafficking conspiracy.

12 So, as far as relevance goes, the text messages are
13 obviously relevant.

14 With respect to whether the statement is in
15 furtherance of the conspiracy, I would argue to the Court that
16 they are. And when two coconspirators are essentially
17 negotiating or arguing about who gets to have this person on a
18 particular day, that's in furtherance of the conspiracy, even
19 if they're at odds with each other, even if they're both
20 saying, like, hey I wanted her this weekend. That's a
21 statement of essentially negotiation. They don't have to be
22 lovey-dovey all the time.

23 Peter's appears pissed in the text message. You took
24 one of my top weekend girls.

25 And LaMont is essentially throwing it in his face.

1 Yeah, and she does anal too.

2 So it's relevant, and it's negotiation about the
3 conspiracy. And you don't have to find that beyond the
4 reasonable doubt at this stage.

5 **THE COURT:** Mr. Foti?

6 **MR. FOTI:** Judge, I -- I -- I'm just trying to -- and
7 I don't mean this to be offensive, I'm trying to wrap my mind
8 around the idea that they're negotiating over something,
9 because Peter Gerace is indicating I -- is speaking to him as
10 a competitor in this respect. There's no request --

11 **THE COURT:** Yeah, I agree with you. I don't think
12 it's in furtherance. It's not gonna come in for the substance
13 of it. I don't think it comes in in furtherance of the
14 conspiracy. In fact, I think in light of what the 2nd Circuit
15 has said, this is -- this is almost anything but.

16 I agree with you. He's saying I stole one of your --
17 you stole one of my girls, and Peter's a little pissed. That
18 means it's not in furtherance of the conspiracy. That means
19 it's as a competitor, so I agree with you on that.

20 **MR. TRIPI:** Judge --

21 **THE COURT:** Go ahead.

22 **MR. TRIPI:** -- I'm sorry, one other way that I
23 believe I argued it in briefing if not in a prior iteration of
24 this, I know a lot of water under the bridge, so, the -- I
25 think this is an adoptive admission as well. Under

1 circumstances where a regular person would deny knowledge, the
2 defendant is silent. And there's authority for the notion
3 that where someone would deny something or disavow knowledge
4 and they don't, that you can --

5 **THE COURT:** So he should say no, he doesn't do anal?
6 After he says she does anal, LOL?

7 **MR. TRIPI:** Or I don't know what you're talking
8 about. Things like that.

9 **THE COURT:** No, especially with the LOL. Especially
10 with the LOL. No, I don't agree with that.

11 But, so -- so one of the statements that I'm reading
12 from, the United States versus San -- Saneaux case, which is
13 albeit a District Court case, but I think a good one,
14 statements which tend to frustrate or hinder the goals of the
15 conspiracy cannot reasonably be interpreted as furthering the
16 conspiracy.

17 This certainly would have done that here.

18 **MR. TRIPI:** Judge, if I could jump in?

19 I -- I go back to what I argued to you at the bench,
20 which was -- and I think we started sort of in the lead on
21 this argument, and we've swung back the other way. And I
22 think what I was trying to explain at the bench was when you
23 have two people in a conspiracy, and they're discussing
24 personnel, that's clearly what's happening here.

25 So they have a dancer who works for both of them and

1 they're discussing personnel. That's -- that's no different
2 than moving troops around the field, or personnel in a
3 football game.

4 **THE COURT:** Mr. Tripi, I understand what you're
5 saying. I disagree with you. I disagree. It's not coming in
6 for the substance.

7 Talk to me about why it shouldn't come in -- talk to
8 me about why on a 401, 403, it shouldn't come in.

9 **MR. FOTI:** Yeah. So, to give you an idea of -- I
10 mean, obviously we have an -- an argument that it's a joke,
11 but an argument doesn't take away the impact of seeing
12 somebody referencing anal in a message that -- I understand
13 what Mr. Tripi's point was -- but there's no response at all
14 or indication that it was even seen. The next text message is
15 several months later.

16 **THE COURT:** But Mr. Cooper -- but Mr. Cooper, I don't
17 think he's got to put it in proof that it was actually seen.
18 And Mr. Cooper is arguing that it comes in for, again, for the
19 defendant's state of mind and context. And I don't see why it
20 wouldn't come in for that.

21 And I don't think it's unduly prejudicial, given the
22 fact that there's been plenty of -- dear Lord in heaven, this
23 is one of the milder things that has come in in the course of
24 this trial. There's been all sorts of proof graphically asked
25 about different types of sex in this case. So I'm -- I'm not

1 seeing how this is unduly prejudicial.

2 **MR. FOTI:** Well, I think it's only probative if
3 there's some confirmation Mr. Gerace saw it. And if there's
4 no indication that he did, there's no continuation of the
5 conversation at all, or any type of digital acknowledgment
6 that it was something that he actually.

7 **MR. COOPER:** Judge, it still --

8 I'm sorry, Mark. I didn't mean to cut you off. I
9 thought you were wrapping up.

10 If it was the last text message ever in the chain,
11 Mr. Foti would have a stronger argument. But the conversation
12 continues, he can argue that, hey, there's no proof he read
13 this text message, and we can argue the text messages continue
14 on after that, but it's certainly -- it establishes the
15 defendant's notice that Darryl LaMont was having women engage
16 in sex acts, and that's at issue in this trial --

17 **THE COURT:** Yep.

18 **MR. COOPER:** -- without question.

19 **MR. FOTI:** I think that there's a number of reasons
20 the probative value is limited. One is that we don't have
21 confirmation that he saw it. And I understand the argument
22 that that only goes to weight, but that is legitimately a
23 point that diminishes the probative value of the message.

24 The fact that there's an LOL on there suggests that
25 there was, one, potentially an intent to make a joke, whether

1 it was a tasteful joke or not, and certainly that Mr. Gerace
2 could have, if he did see it, could have merely interpreted it
3 as a joke.

4 Trying to import some sort of probative value as to
5 what Mr. Gerace's mindset is on a text message that has no
6 further context at all, given the prejudicial nature of it, I
7 don't think it survives a 403 test.

8 **MR. COOPER:** Judge, there's almost no -- in this case
9 in the universe of facts that have existed in this courtroom,
10 there's almost no prejudice associated with the word "anal."

11 The reason that they're try -- and I get it, I
12 respect it, it's his job -- but the reason that they're trying
13 so hard to keep it out is because of how much probative value
14 it has.

15 It's Darryl LaMont and Peter Gerace discussing a
16 woman engaging in sex acts. The fact that the word "anal"
17 exists has almost zero prejudicial value in this case in this
18 universe of facts.

19 **THE COURT:** Okay. I think it comes in. It comes in
20 only for context. And that's my decision.

21 **MR. COOPER:** For notice -- for notice to the
22 defendant.

23 **THE COURT:** For -- for --

24 **MR. COOPER:** When you say "context" --

25 **THE COURT:** The defendant's state of mind and the

context of the conversation.

MR. TRIPI: Understood. Thank you.

THE COURT: Okay. Yes.

MR. FOTI: I just would ask that the ins -- and I don't think it has in the past, but just the instruction not suggest to the jury that there's an indication he saw the message, that's fine.

THE COURT: No, you can argue that. I'm not gonna say that.

MR. FOTI: No, I understand that.

THE COURT: Of course you can argue that.

MR. COOPER: It's being offered to prove the defendant's knowledge is --

THE COURT: It's being offered to prove the defendant's knowledge.

MR. COOPER: And then you can say --

THE COURT: And then you can say, I mean, if you want to -- if you want to say something at that point, say clarify, you know, there's no indication that he actually saw it, I'd say I'm not saying that. What I'm saying is it's being offered to show that the defendant knew that, whether he saw it or not doesn't -- we don't know.

MR. COOPER: I would just suggest that that's for cross. He can cross Special Agent Burns on that.

THE COURT: I guess that's true.

12:15PM

1

MR. COOPER: That's a legal instruction.

12:15PM

2

MR. FOTI: I can't cross Mr. Burns on it. He doesn't

12:15PM

3

know.

12:15PM

4

THE COURT: That's right. That's the point. That's

12:15PM

5

the point. He's gonna say he doesn't know.

12:15PM

6

Do you know whether Mr. Gerace ever saw this? I have

12:15PM

7

no idea.

12:15PM

8

MR. FOTI: Yeah, that's -- I think we're not

12:15PM

9

disagreeing with each other, but to the extent that we have no

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evidence of whether Mr. Gerace saw it, I don't think it should

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11

be suggested that he did.

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12

THE COURT: So, okay, so let's come up with some

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language that would you like me to tell the jury that this is

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14

being offered to show Mr. Gerace's state of -- I mean, I think

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15

that more or less does it. That it's being -- the government

12:16PM

16

is offering this to show Mr. Gerace's state of mind.

12:16PM

17

I mean, I'm willing to work with you on language that

12:16PM

18

we can -- that -- I mean, I don't think we're really saying

12:16PM

19

anything different on this issue. And I'm willing to work

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with you on language. You've got half an hour to come up with

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21

it, okay?

12:16PM

22

MR. FOTI: Understood.

12:16PM

23

THE COURT: Great. Anything else before we break?

12:16PM

24

MR. TRIPI: The last one we're probably going to

12:16PM

25

argue about is the text thread with Chris Chudy. It's gonna

1 be a similar type of argument. Do you want me to just hand it
2 up and you want to look at it in chambers and come back?

3 **THE COURT:** Yeah.

4 **MR. TRIPI:** Is that easier for you?

5 **THE COURT:** It's the same sort of thing.

6 **MR. TRIPI:** Same sort of idea. It's about drugs as
7 opposed to sex, but same idea. And so they're all on
8 November 1st, Judge.

9 **THE COURT:** Okay. Great.

10 **MR. TRIPI:** If you want to do it after --

11 **THE COURT:** And you're going to go through this, go
12 through that, and then what?

13 **MR. TRIPI:** And then I'm going to move into getting
14 our chart in.

15 **THE COURT:** And you're going to object to the chart
16 or not object to the chart?

17 **MR. FOTI:** No.

18 **THE COURT:** Great. Thanks, folks.

19 **MR. TRIPI:** Thank you.

20 **THE CLERK:** All rise.

21 (Off the record at 12:17 p.m.)

22 (Back on the record at 12:54 p.m.)

23 (Jury not present.)

24 **THE CLERK:** All rise.

25 **THE COURT:** Please be seated.

4 All counsel and parties are present.

9 In other words, he's saying that there are double
0 standards. That do you it all the time for your people. If
1 you're not a biker or a partier, you're nothing. I'm not
2 allowed to watch the cameras.

16 | Let me finish. Please, let me finish.

22 So I think it's pure hearsay, and I don't think it's
23 coming in, but I will hear your argument.

25 **MR. COOPER:** Judge --

12:55PM 1 **MR. TRIPI:** You can follow up, Nick, if you don't
12:55PM 2 mind.

12:55PM 3 **MR. COOPER:** Oh, okay.

12:55PM 4 **MR. TRIPI:** He does it to me, too, Judge, I'm sorry.

12:55PM 5 **THE COURT:** No, no, no, that's okay, I get it.

12:55PM 6 **MR. TRIPI:** Yes. The thing I would argue again, and
12:55PM 7 I know you rejected it before the break, but Mr. Gerace
12:55PM 8 doesn't respond to any of that directly.

12:55PM 9 **THE COURT:** Yep.

12:55PM 10 **MR. TRIPI:** I think that those circumstances -- my
12:55PM 11 argument would be to you an adopted admission. He goes on to
12:55PM 12 other -- he stills addresses it.

12:55PM 13 **THE COURT:** He says no in the last one. He says no.
12:56PM 14 The last -- the last text message is no.

12:56PM 15 Go ahead, Mr. Cooper.

12:56PM 16 **MR. COOPER:** Judge, I guess what I would argue
12:56PM 17 similar to what I argued earlier with respect to Mr. LaMont is
12:56PM 18 that these should come in at a minimum for state of mind, and
12:56PM 19 here's why.

12:56PM 20 **THE COURT:** Go ahead.

12:56PM 21 **MR. COOPER:** The defense has argued, and they did so
12:56PM 22 as recently as yesterday with respect to Ms. L.L., that the
12:56PM 23 fact that Brian was being paid off to look the other way
12:56PM 24 doesn't mean that this defendant was aware of illegal conduct
12:56PM 25 happening at the club.

1 And here, Chudy is saying there's drug dealing, these
2 bikers, and you don't care, you know, you're not concerned
3 with it if they're people that party with you.

4 And so he's making Gerace directly aware of the
5 partiers getting away with things that are inappropriate at
6 the club. I expect there's gonna be a defense summation in
7 this case heavily referencing that, like, they can't prove
8 Peter knew about this stuff.

9 So at a minimum, I would suggest to the Court that it
10 needs to come in to show state of mind and awareness. Here's
11 a manager reporting, hey, there's this misconduct happening at
12 the club.

13 **THE COURT:** I don't see him reporting misconduct.

14 **MR. TRIPI:** I think the focus is the word "partier,"
15 Judge. Partier, the connotation is cocaine use.

16 **THE COURT:** No. This is not going to come in.

17 **MR. TRIPI:** Okay. Can get it back?

18 **THE COURT:** Number 2 -- no, I'm gonna keep it.

19 Number 2. Juror number 6 says that he knows the
20 young lady shown in the last photo that was displayed.

21 **MR. SOEHNLEIN:** Which photo was that?

22 **MR. TRIPI:** I think that would have been a text
23 thread, there was a young lady, Amanda maybe, was referenced.
24 It was in 310. I think that -- I think that was the last
25 photo that --

12:57PM 1 **MR. COOPER:** Can you pull up 310AS. Is it AS?

12:57PM 2 **MR. TRIPI:** It's AS, yes. And it's the
12:58PM 3 second-to-last page of the PDF. It's towards the end. There
12:58PM 4 you go.

12:58PM 5 I think that's the last photo of a young lady that I
12:58PM 6 had shown.

12:58PM 7 **MR. COOPER:** Yeah.

12:58PM 8 **THE COURT:** Should we bring him in and ask?

12:58PM 9 **MR. TRIPI:** I think given that it's evidence in the
12:58PM 10 case, Judge, I think we have to ask if it's going to impact
12:58PM 11 his ability to be fair to either side.

12:58PM 12 **MR. FOTI:** Yeah. And maybe I think it also would be
12:58PM 13 helpful to just note the context under which he knows her.

12:58PM 14 **THE COURT:** Yeah, I agree.

12:58PM 15 **MR. COOPER:** Agree.

12:58PM 16 **THE COURT:** Okay. So let's bring juror number 6 in,
12:58PM 17 please.

12:58PM 18 **MR. COOPER:** Would we be able to just confirm that
12:58PM 19 this is what he's speaking about, also maybe quickly show this
12:58PM 20 photo?

12:58PM 21 **THE COURT:** Any problem with that?

12:58PM 22 **MR. SOEHNLEIN:** No.

12:58PM 23 **THE COURT:** Yeah.

12:58PM 24 **MR. COOPER:** Just to make sure that we know.

12:58PM 25 **THE COURT:** Yeah, why don't you step down.

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THE WITNESS: Okay.

(Mr. Burns exited the courtroom at 12:58 p.m.)

MS. CHAMPOUX: Should I crop this?

MR. COOPER: Yeah, I don't think he needs to see her lower half to make that assessment.

MS. CHAMPOUX: It just says Amanda.

(Juror 6 entered courtroom at 12:59 p.m.)

THE COURT: You can stay right there. There's no reason for you to go all the way back.

Pat, do we have a microphone?

THE CLERK: I'll get it.

THE COURT: So we're in the courtroom with Juror Number 6. And I understand that you recognized the young lady shown in one of the photos that was displayed; is that correct?

JUROR 6: Correct.

THE COURT: Is it this photo, the one that's up there now?

JUROR 6: Yes.

THE COURT: Okay. And how do you know that person?

JUROR 6: We used to work together at the plant, at the General Motors plant.

THE COURT: Okay. When was the last time you talked to her or saw her?

JUROR 6: Oh, probably the last day she was there.

1 And that was probably seven years ago.

2 **THE COURT:** Okay. Anything about the fact that you
3 know her and that her photo has now appeared in the context of
4 these text messages that's going to affect your ability to be
5 fair in this case?

6 **JUROR 6:** No, I just felt I needed to say something.

7 **THE COURT:** Absolutely. And we're very glad that you
8 are. But is there anything about this that makes you feel
9 uncomfortable, or that makes you feel as though you couldn't
10 give a fair shake to the defendant, or give a fair shake to
11 the government?

12 **JURORS 6:** No.

13 **MR. COOPER:** May I just --

14 **THE COURT:** Go ahead.

15 **MR. COOPER:** A very long time ago when we were doing
16 jury selection, one of the things that came up as a recurring
17 theme was keeping the decision-making process when you go in
18 the verdict room limited to what happened and what proof came
19 in this courtroom.

20 If you have had conversations with that person, or
21 know things about them, can you promise everybody that you'll
22 only decide this case based on proof that came in in this
23 courtroom?

24 **JUROR 6:** Yes, I can.

25 **MR. COOPER:** Excellent. I'm good, Judge.

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MR. FOTI: No questions.

THE COURT: Terrific. Thank you very much. And you did exactly the right thing in telling us. So, thank you.

JUROR 6: No problem.

(Juror 6 exited the courtroom at 1:00 p.m.)

THE COURT: I think they feel as though when we bring them in, they've done something wrong.

MR. COOPER: Like the principal's office.

THE COURT: Okay. Anything else we should do before we resume?

MR. COOPER: No.

THE COURT: Mr. Tripi?

MR. TRIPI: No, Judge.

THE COURT: Mr. Foti?

MR. FOTI: No, Judge.

THE COURT: Okay. Great. Thank you.

Let's bring them in, please, Pat.

MR. TRIPI: We're gonna start with that text message, Judge, so I assume you're going to give your instruction right after I display it?

THE COURT: Yes. Oh, Mr. Foti, did you come up with any language you wanted me to use in addition?

MR. FOTI: What I would ask for is just goes to his state of mind to the extent that he may have seen the message, and that's it.

01:01PM 1 **MR. COOPER:** Judge, I -- I'm not trying to be a pain
01:01PM 2 here, but I don't think that the Court should weigh in on
01:01PM 3 whether or not he saw the message. The legal ruling is it's
01:01PM 4 being offered for his state of mind. They can cross-examine
01:01PM 5 the witness, and they can sum up on there's no proof that he
01:01PM 6 saw it. I'm not -- I don't know that that should really be a
01:01PM 7 part of a legal instruction.

01:01PM 8 **MR. FOTI:** I didn't ask the Court to weigh it, I just
01:01PM 9 asked to say to the extent that he may have seen the message,
01:02PM 10 which is what the government is saying they want to use it
01:02PM 11 for.

01:02PM 12 **MR. COOPER:** What are you gonna --

01:02PM 13 **MR. TRIPI:** Do you want to hold them up, Judge?

01:02PM 14 **THE COURT:** No, that's okay. They can come in.
01:02PM 15 You'll hear it when I give it.

01:02PM 16 **MR. COOPER:** Understood.

01:02PM 17 **THE CLERK:** Joe, which exhibit number is this?

01:02PM 18 **MR. TRIPI:** This is 310AS.

01:02PM 19 **THE CLERK:** Thank you.

01:02PM 20 (Jury seated at 1:02 p.m.)

01:02PM 21 **THE COURT:** Okay. Welcome backs, folks. The record
01:02PM 22 will reflect that all our jurors are present.

01:02PM 23 I remind the witness that he's still under oath.

01:02PM 24 Folks, you're gonna see another text message
01:02PM 25 exchange. This text message exchange is being offered,

again -- Mr. Gerace's text message is being offered for all purposes. The other person's text message is being offered only to show -- the government says that -- the government believes that it shows Mr. Gerace's state of mind because it's a text message that was sent to him. Okay? And it's being admitted only for that.

Mr. Tripi, you can continue.

MR. TRIPI: Thank you, Your Honor.

I'd like to pull up one more message as the judge indicated, the exchange regarding Exhibit 310AS.

BY MR. TRIPI:

Q. And Special Agent Burns, can you read in the blue box what Mr. Gerace wrote on October 16th, 2017, and Mr. LaMont's response that same day?

A. The defendant stated or text states: You took one of my top weekend girls.

Mr. LaMont responds: And she does anal, dot, dot, LOL.

Q. Okay. Now, I want to focus you in on the date and time.

We see UTC time for the text by the defendant is

October 16th, 2017 at 12:05 p.m. So given that time of year,

I think we've established that would be minus four hours

making it that 8:05 a.m.; is that right?

A. That's correct.

Q. All right. And then the response by Mr. LaMont is at

2:03 p.m. UTC time, so minus four hours would put it at about

1 10:03 a.m.; is that right?

2 A. That's accurate.

3 **MR. TRIPI:** Okay. Ms. Champoux, can we flip over to
4 Government Exhibit 359 phone records for Mr. Gerace previously
5 entered into evidence.

6 And can we go to the PDF labeled 2016 to 2018 bills.

7 **BY MR. TRIPI:**

8 Q. And Mr. -- Special Agent Burns, I'd like to start you at
9 page 567 to orient you as to the year that these bills are
10 in. Do you see on page 567 a date of February 20th, 2017?

11 A. Yes, I do.

12 Q. Is that an indication reading the bills that we're in
13 January of 2017, so we're going follow the months in the far
14 column, and it's going to be the year 2017 until you see
15 we've gone through 12 months; is that right?

16 A. That's accurate.

17 **MR. TRIPI:** All right. Ms. Champoux, can we scroll
18 down, scroll down to page number 955. But could you scroll
19 just a little bit so they can see the months changing?

20 **BY MR. TRIPI:**

21 Q. All right. So there's a lot of call data there. We're
22 going to jump forward on the PDF to page 955.

23 A. Okay.

24 Q. All right. And I would like to go to a call
25 October 16th, 2017 at 10:04 a.m.

01:05PM 1 All right. Can we get that bar out of there.

01:06PM 2 All right. Moments ago, when we were looking at

01:06PM 3 Government Exhibit 310AS, I think you established that the

01:06PM 4 time of Mr. Gerace's text to Mr. LaMont that you took one of

01:06PM 5 my top weekend girls was at approximately 8:05 a.m.; do you

01:06PM 6 recall that?

01:06PM 7 A. Yes, I do.

01:06PM 8 Q. Is there a call from Mr. LaMont incoming to Mr. Gerace's

01:06PM 9 phone at about 10:04 a.m. that same day?

01:06PM 10 A. Yeah, shortly after that last text.

01:06PM 11 Q. And how long is that incoming call, what's the duration

01:06PM 12 indicated?

01:06PM 13 A. Two-minute call.

01:06PM 14 Q. Okay.

01:06PM 15 **MR. TRIPI:** All right. We can take that down,

01:06PM 16 Ms. Champoux.

01:06PM 17 **BY MR. TRIPI:**

01:06PM 18 Q. So that call is the same day, in between the texts; is

01:06PM 19 that right?

01:06PM 20 A. Yes, that's accurate.

01:06PM 21 Q. Okay. All right. Going back to Mr. Gerace's phone, were

01:07PM 22 you also able to isolate some photographs that were in the

01:07PM 23 phone?

01:07PM 24 A. Yes. There were images in the extraction.

01:07PM 25 Q. And --

01:07PM 1 A. Pictures.

01:07PM 2 Q. One of them that was extracted, did that include another
01:07PM 3 picture of him with -- the defendant with Judge Michalski and
01:07PM 4 C.C.?

01:07PM 5 A. Yes.

01:07PM 6 Q. I'm going to hand you up Exhibit 310AU-1.

01:07PM 7 Do you recognize that to be an image of a photo that was
01:07PM 8 contained inside Mr. Gerace's phone in the extraction?

01:07PM 9 A. Yes, I do.

01:07PM 10 Q. Is it fair and accurate rendering of the photo that was
01:07PM 11 extracted from the phone?

01:07PM 12 A. Yes, it's a printout.

01:07PM 13 **MR. TRIPI:** The government offers Exhibit 310AU-1.

01:07PM 14 **MR. FOTI:** No objection.

01:07PM 15 **THE COURT:** Received without objection.

01:07PM 16 **(GOV Exhibit 310AU-1 was received in evidence.)**

01:07PM 17 **MR. TRIPI:** May we publish that, Ms. Champoux?

01:07PM 18 **BY MR. TRIPI:**

01:08PM 19 Q. Thank you very much. In the middle, is that the
01:08PM 20 defendant.

01:08PM 21 A. Yes, it is.

01:08PM 22 Q. On the left-hand side of the image that we're looking at,
01:08PM 23 is that C.C.?

01:08PM 24 A. Yes, sir.

01:08PM 25 Q. Did she testify in this trial?

01:08PM 1 A. She did.

01:08PM 2 Q. And on the right-hand side of the photo, on the other
01:08PM 3 side of Mr. Gerace, is that Judge John Michalski?

01:08PM 4 A. Yes, it is.

01:08PM 5 **MR. TRIPI:** Okay. We can take that down.

01:08PM 6 Ms. Champoux, can we go to Government Exhibit 310AT.

01:08PM 7 **THE COURT:** Is this in?

01:08PM 8 **MR. TRIPI:** This is in.

01:08PM 9 **BY MR. TRIPI:**

01:08PM 10 Q. These are the contacts -- this is the exhibit related to
01:08PM 11 the contacts of Mr. Gerace's phone; is that right?

01:08PM 12 A. That's correct.

01:08PM 13 Q. All right. I'm going to go through some questions here.
01:08PM 14 And I might go to some of the entries, but I'm gonna try to
01:08PM 15 speed this up a bit.

01:08PM 16 A. Okay.

01:08PM 17 Q. So, we've heard at this trial some testimony about Justin
01:08PM 18 White, an attorney. Is there a contact in Mr. Gerace's phone
01:08PM 19 for attorney Justin White?

01:08PM 20 A. Yes, there is.

01:08PM 21 Q. Are there contacts for other attorneys that have been
01:08PM 22 mentioned by Ms. Nigro during the investigation?

01:08PM 23 A. Yes, there is.

01:08PM 24 Q. Are there contacts in Mr. Gerace's phone for former
01:09PM 25 members of the Buffalo Sabres?

01:09PM 1 A. Yes, there is.

01:09PM 2 Q. Does that include one who was mentioned by several

01:09PM 3 witnesses to you?

01:09PM 4 A. Yes, it does.

01:09PM 5 Q. Are there members of local police law enforcement

01:09PM 6 agencies in Mr. Gerace's phone contacts?

01:09PM 7 A. Yes, there is.

01:09PM 8 Q. Are there members of New York State Police in

01:09PM 9 Mr. Gerace's phone contacts?

01:09PM 10 A. There is.

01:09PM 11 Q. Obviously, there was a text message thread between

01:09PM 12 Mr. Gerace and Mr. Bongiovanni, that's been in evidence as in

01:09PM 13 Exhibit 310D; is that correct?

01:09PM 14 A. That's correct.

01:09PM 15 Q. So within the phone extraction, there were contacts with

01:09PM 16 local, state, and federal authorities, correct?

01:09PM 17 A. Yes, there was, law enforcement officers.

01:09PM 18 Q. Record 12 in Exhibit 310AF, we can go there, was there a

01:09PM 19 phone contact for Dan Derenda?

01:09PM 20 A. There was.

01:09PM 21 Q. And that was someone Ms. Nigro had mentioned during her

01:09PM 22 testimony?

01:09PM 23 A. Yes.

01:10PM 24 **MR. FOTI:** Objection.

01:10PM 25 **THE COURT:** Sorry?

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MR. FOTI: Withdrawn.

BY MR. TRIPI:

Q. Record 2, there's a contact for Jeff Anzalone; is that right?

A. That's correct.

MR. TRIPI: I'm a little ahead of Ms. Champoux.

Thank you, Ms. Champoux.

BY MR. TRIPI:

Q. Was he a witness who testified at this trial?

A. Yes, he is.

Q. Record 9. Is there a contact with a phone number for Chris Chudy?

A. Yes, there is.

Q. Was he a manager at Pharaoh's during the duration of conduct at this trial?

A. He was.

Q. If we go to record 10, is there a contact for Jessica, also known as Charm?

A. There is.

Q. Do you understand that to be Jessica Leyland?

A. That is Jessica Leyland.

Q. Was she a Pharaoh's associate and employee during the time period encompassed by this trial?

A. Yes, she was.

MR. TRIPI: Can we also show, Ms. Champoux,

Exhibit 562 just to remind the jury about this exhibit.

BY MR. TRIPI:

Q. All right. Do we see a photograph here, Exhibit 562, a photo with Charm in the middle of Mr. Gerace and Mr. Reed?

A. Yes, that's Jessica Leyland.

MR. TRIPI: Okay. You can take that down.

If we can go back to 310AT, record 13.

BY MR. TRIPI:

Q. Is there an entry for Tommy Doctor?

A. Yes, there is.

Q. Is that the former DEA task force officer and Buffalo police narcotics detective?

A. Yes, it is.

MR. TRIPI: Can we show Exhibit 126, Ms. Champoux.

I'm sorry 127. My fault.

BY MR. TRIPI:

Q. Is Mr. Doctor circled on the left-hand side of the image in that exhibit?

A. Yes, that is Mr. Doctor.

Q. And there's been testimony about him at this trial?

A. There has been.

MR. TRIPI: We can go back to Exhibit 310AT,

Ms. Champoux.

BY MR. TRIPI:

Q. If we can go to record 15, do you see an entry for an

01:12PM 1 Eric Fox?

01:12PM 2 A. Yes, I do.

01:12PM 3 Q. And K.L. was a witness in this trial?

01:12PM 4 A. She was.

01:12PM 5 Q. During her testimony, you sat here, did Ms. K.L. mention

01:12PM 6 Eric Fox?

01:12PM 7 A. She did.

01:12PM 8 Q. We've talked enough about this next person, but record

01:12PM 9 16. Is that Hot Dog?

01:12PM 10 A. Yeah, Paul Francoforte.

01:12PM 11 Q. And I think yesterday we covered the phone contacts and

01:12PM 12 the phone pertaining to him, correct?

01:12PM 13 A. That's correct.

01:12PM 14 Q. All right. We'll move on then.

01:12PM 15 Does Hot Dog, Paul Francoforte, in the law enforcement

01:12PM 16 community have a reputation as being associated with Italian

01:12PM 17 Organized Crime?

01:12PM 18 A. Yes, he does.

01:12PM 19 **MR. FOTI:** Objection, relevance.

01:12PM 20 **MR. TRIPI:** It's the same.

01:12PM 21 **THE COURT:** Overruled.

01:12PM 22 **MR. TRIPI:** Can we go to record number 18, please.

01:12PM 23 **BY MR. TRIPI:**

01:12PM 24 Q. There's been testimony about Marcus Black in this trial;

01:13PM 25 do you recall that?

01:13PM 1 A. Yes.

01:13PM 2 Q. Does this entry, record 18, have both a phone number and
01:13PM 3 a Facebook for Marcus Black?

01:13PM 4 A. It does.

01:13PM 5 Q. Do you know his true name?

01:13PM 6 A. Yes, I do.

01:13PM 7 Q. What is that?

01:13PM 8 A. Marcus Hatten.

01:13PM 9 Q. Is that one of the indicators in the Facebook account?

01:13PM 10 A. Yes, it is.

01:13PM 11 **MR. TRIPI:** Let's go to record 38.

01:13PM 12 **BY MR. TRIPI:**

01:13PM 13 Q. Is that an entry and a phone number for K.L.?

01:13PM 14 A. Yes, it is.

01:13PM 15 Q. Is she a witness who testified in this case?

01:13PM 16 A. Yes, she is.

01:13PM 17 **MR. TRIPI:** Let's go to record number 40, please.

01:13PM 18 **BY MR. TRIPI:**

01:13PM 19 Q. Is that Tom Napoli?

01:13PM 20 A. It is.

01:13PM 21 **MR. TRIPI:** Can we show Exhibit 490A.

01:13PM 22 **BY MR. TRIPI:**

01:13PM 23 Q. Is this a photo the jury has seen, 490A, a photo that
01:14PM 24 depicts Tom Napoli, the defendant, and Joseph Bongiovanni
01:14PM 25 with others in Las Vegas?

01:14PM 1 A. Yes, it does.

01:14PM 2 **MR. TRIPI:** Can we also show Exhibit 127 now? 126.

01:14PM 3 I had those reversed, sorry.

01:14PM 4 **BY MR. TRIPI:**

01:14PM 5 Q. Does Exhibit 126 on the right of the screen also show Tom

01:14PM 6 Napoli indicated in a photo from Toronto with Joseph

01:14PM 7 Bongiovanni and others?

01:14PM 8 A. Yes, it does.

01:14PM 9 Q. Okay. And did Lou Selva and Kevin Myszka each provide
01:14PM 10 testimony at this trial about Tom Napoli?

01:14PM 11 A. They did.

01:14PM 12 **MR. TRIPI:** We can take those down. Let's go back to

01:14PM 13 Exhibit 310AT. And we're gonna go to record 45.

01:14PM 14 **BY MR. TRIPI:**

01:14PM 15 Q. Earlier we went through text messages between the

01:14PM 16 defendant and Greg Trotter; is that correct?

01:14PM 17 A. That's correct.

01:14PM 18 Q. And the text thread with Detective Trotter was 310AQ; is
01:14PM 19 that right?

01:15PM 20 A. That's accurate.

01:15PM 21 Q. Government Exhibit 251B is a Greg Trotter business card;
01:15PM 22 is that right?

01:15PM 23 A. That's correct.

01:15PM 24 Q. There's a phone number on the front, and a handwritten
01:15PM 25 number on the back; is that right?

01:15PM 1 A. Yes, it does.

01:15PM 2 Q. Does the handwritten number on the back of Exhibit 251B,
01:15PM 3 is it different than the number that is stored in record
01:15PM 4 number 45?

01:15PM 5 A. Yes. This was his Amherst Police Department phone.

01:15PM 6 Q. Well, you see a phone number on the back of the card,
01:15PM 7 right?

01:15PM 8 A. Yes.

01:15PM 9 Q. And that's a 208 number?

01:15PM 10 A. That is.

01:15PM 11 Q. And this number stored in Mr. Gerace's phone is
01:15PM 12 different?

01:15PM 13 A. It is.

01:15PM 14 Q. In 310AQ, do you remember discussion of Trotter
01:15PM 15 indicating that he had a new phone number?

01:15PM 16 A. Yes, I do.

01:15PM 17 Q. And you read those texts earlier today, correct?

01:15PM 18 A. Yes, I did.

01:15PM 19 **MR. TRIPI:** All right. Let's go to record number 48,
01:15PM 20 please, in Exhibit 310AT.

01:15PM 21 **BY MR. TRIPI:**

01:16PM 22 Q. We've talked about Frank Tripi earlier today; is that
01:16PM 23 right?

01:16PM 24 A. Yes, we have.

01:16PM 25 Q. And that was the person indicated in the OCDETF report

that was located in Defendant Bongiovanni's basement; is that right?

A. Yes, he was a main subject --

Q. Okay.

A. -- identified in that OCDETF.

MR. TRIPI: Let's go to record 50 in Exhibit 310AT.

BY MR. TRIPI:

Q. Is P.R. also known as P.H.?

A. Yes, it is.

Q. Is Ms. P.H. someone who testified in this trial?

A. She was.

MR. TRIPI: Let's go to record number 51.

BY MR. TRIPI:

Q. And this is an entry for Anthony Bro; is that right?

A. It is.

Q. The defendant has a brother Anthony?

A. Anthony Gerace, correct.

Q. And during the search is entered into the -- withdrawn.

During a search of Mr. Anthony Gerace's residence, there was a photo of a ledger entered into evidence as

Exhibit 72A-55; is that right?

A. That's correct.

Q. And were there names on that sort of ledger photograph

that overlapped with some of the contacts in the defendant's phone?

01:17PM 1 A. Yes, it was.

01:17PM 2 Q. Okay.

01:17PM 3 **MR. TRIPI:** We can take that down.

01:17PM 4 **BY MR. TRIPI:**

01:17PM 5 Q. I just want to ask you a couple of questions about
01:17PM 6 RuthAnn Arida.

01:17PM 7 A. Certainly.

01:17PM 8 Q. You're aware that on June 26th, 2020, members of the FBI
01:17PM 9 task force working with you met and interviewed Ms. Arida; is
01:17PM 10 that right?

01:17PM 11 A. That's correct.

01:17PM 12 Q. After that, Ms. Arida was subpoenaed to testify before
01:17PM 13 the grand jury on September 17th, 2020?

01:17PM 14 A. She was.

01:17PM 15 Q. Is that grand jury located in this building?

01:17PM 16 A. Yes, it's on the third floor.

01:17PM 17 Q. And were you present to meet her in this building with
01:17PM 18 the AUSA who dealt with her in the grand jury?

01:17PM 19 A. I was present.

01:17PM 20 Q. Who was the AUSA who was dealing with her that day?

01:17PM 21 A. Brendan Cullinane AUSA.

01:17PM 22 Q. Okay. And just to clarify, based on an exchange in court
01:17PM 23 here, was I present at all that day with Ms. Arida?

01:17PM 24 A. Not that I recall.

01:18PM 25 Q. All right. You had some text messages with Katrina

01:18PM 1 Nigro; is that right?

01:18PM 2 A. That's correct.

01:18PM 3 Q. Did you and others independently investigate and meet
01:18PM 4 with any witnesses that she provided names of?

01:18PM 5 A. Yeah, she identified a few individuals who she suggested
01:18PM 6 might be useful to --

01:18PM 7 Q. Was one of them K.M.?

01:18PM 8 A. One was, yes.

01:18PM 9 Q. Did Ms. Nigro know her by, like, a dancer name, Maze?

01:18PM 10 A. Yes.

01:18PM 11 Q. Other texts from Ms. Nigro related to things that were
01:18PM 12 going on in her life generally speaking?

01:18PM 13 A. Yeah. She would text from time to time with things,
01:18PM 14 items like that.

01:18PM 15 Q. As a human being, and a member of the community, do you
01:18PM 16 genuinely care about the health and wellness of witnesses who
01:18PM 17 you're interacting with?

01:18PM 18 A. Yes.

01:18PM 19 Q. Is there anything wrong with someone texting you about
01:18PM 20 what they're doing to improve themselves?

01:18PM 21 A. Nothing at all.

01:18PM 22 Q. If they give you an update on what they may be doing to
01:19PM 23 improve their life, do you ignore them?

01:19PM 24 A. Not at all.

01:19PM 25 Q. All right. Special Agent Burns, during the course of

1 your trial prep in this case, did you work to develop some
2 charts that summarize some of the evidence the jury heard,
3 voluminous evidence and testimony that they heard over the
4 past two months of this trial?

5 A. Yes. I put together a chart of the voluminous testimony
6 and the voluminous amount of exhibits.

7 Q. And generally, did you work with Homeland Security and
8 the U.S. Attorney's Office to create a chart pertaining to
9 the voluminous evidence this jury has heard over the course
10 of roughly two months?

11 A. Yes, collaboratively we worked on it.

12 Q. During the course of prep in this case, did you work to
13 work to develop that chart summarizing the evidence and the
14 testimony to create sort of a visual depiction that
15 categorizes exhibits and witnesses with events that are
16 relevant to this trial?

17 A. Yes. I built it out. We started before the trial, and
18 then as the trial has gone on, I've audited it along the way.

19 Q. Is that commonly referred to as a summary exhibit?

20 A. Yes, it is.

21 Q. Is that what you were preparing to try to summarize
22 what's been happening here?

23 A. Yes. Some way to organize the voluminous testimony and
24 exhibits in a case of this size.

25 Q. Okay. I'm going hand you up a big board marked as

1 Government Exhibit 555. Do you see it?

2 A. Yep.

3 Q. I'm going to arrange the image so you can answer my

4 questions while looking at the exhibit while not displaying

5 it yet. Okay?

6 A. Correct.

7 Q. Generally, can you tell -- tell us what Government

8 Exhibit 555 summarizes?

9 A. It summarizes the certain events that are the testimony

10 and the exhibits relate to during the course of the

11 conspiracies, and it essentially ties them to the various

12 counts, overt acts, manners and means paragraphs from the

13 indictment.

14 Q. And is it your understanding the indictment is something

15 the Court will read later on during its charge?

16 A. That will go to the jury eventually.

17 Q. Does this exhibit summarize voluminous testimony and

18 evidence and connections that exist between the defendant,

19 Pharaoh's, and different individuals whose names have come up

20 during trial and people who have testified?

21 A. Yes. And it relates to the events, certain events that

22 were discussed, and exhibits related to during the course of

23 the trial.

24 Q. Is every connection or category between events and, sort

25 of, the evidence and the witnesses related to those events

01:21PM 1 based upon testimony and evidence that came in at this trial?

01:21PM 2 A. Yes, everything that was entered.

01:21PM 3 Q. How many different individuals are depicted in the chart?

01:22PM 4 A. Individuals is, you mean, witnesses?

01:22PM 5 Q. Yes.

01:22PM 6 A. 35.

01:22PM 7 Q. Now, more than that testified, but not everyone is on the

01:22PM 8 chart; is that right?

01:22PM 9 A. Correct.

01:22PM 10 Q. Now in terms of the individuals depicted on the chart,

01:22PM 11 does that include 17 former Pharaoh's dancers?

01:22PM 12 A. Yes, it does.

01:22PM 13 Q. Does it include one former manager, C.B.?

01:22PM 14 A. Yes, it does.

01:22PM 15 Q. Does it include a former bouncer/manager, Doug

01:22PM 16 Augustyniak?

01:22PM 17 A. It does.

01:22PM 18 Q. Does it include four patrons: John McDonald, Kevin

01:22PM 19 Myszka, Jeff Anzalone and Matthew Albert?

01:22PM 20 A. Yes, it does.

01:22PM 21 Q. Coming off of that, sort of linking to the charged

01:22PM 22 sex-trafficking conspiracy counts, is there a line for a

01:22PM 23 witness who testified as an expert, Rebecca Bender?

01:23PM 24 A. Yes, there is.

01:23PM 25 Q. Does the chart reference -- what is it, 39 exhibits

1 relating to the different counts and overt acts in an attempt
2 to create a visual depiction for the jury associating the
3 exhibits to events?

4 A. Yes, 39 exhibits.

5 Q. Now, as you sit there, are there at least 155 exhibits
6 that have been entered into evidence --

7 A. Yes.

8 Q. -- prior to your testimony?

9 A. Yes, there is.

10 Q. So not every exhibit is referenced on here?

11 A. Correct. I took some of the more pertinent ones to the
12 events.

13 **MR. FOTI:** Objection.

14 **THE COURT:** Yeah, sustained. The jury will strike
15 that.

16 **BY MR. TRIPI:**

17 Q. Was there an effort made to put enough information to
18 allow the jury to look at this summary exhibit and recall
19 items or occurrences for themselves?

20 A. Yes.

21 Q. Does Government Exhibit 555 fairly and accurately
22 summarize the testimony and evidence, and group it in an
23 effort to create a visual summary of the evidence that's come
24 in in the last two months of the trial?

25 A. It does not summarize the testimony, but it does identify

the witnesses and the exhibits.

Q. That was a poorly-phrased question. It identifies the witnesses so that the jury can recall testimony, and have a visual depiction of the events to which their testimony would have related; is that a better way to phrase that question?

A. Yeah, I'm more comfortable with that.

Q. Okay. Sorry about that.

MR. TRIPI: Judge, with that foundation, we offer Government Exhibit 555 as an exhibit for the jury to have and to reference as they deem appropriate.

MR. FOTI: Judge, I'm not going to object. I just -- there's a digital version of it that I'd like to be able to use going forward. So I'm okay with the admission of 555, I would just ask that if they're admitting the demonstrative, I would ask that we also be able to use the digital copy of it.

MR. TRIPI: Yeah, I had planned to do that, Judge. This is so they can take the large board back if they want to use it, and I plan to use the technology.

THE COURT: The digital one, and Mr. Foti will be able to use the digital one as well?

MR. TRIPI: Yes.

MR. FOTI: Sounds good.

THE COURT: With that, no objection?

MR. FOTI: No objection.

THE COURT: Received without objection.

25 | Q. All right. In the very middle, so we're looking at the

01:26PM 1 bottom half here, we have a photograph of Pharaoh's
01:26PM 2 Gentlemen's Club?
01:26PM 3 A. Yes, we do.
01:26PM 4 Q. Is that basically an image that you took from the
01:26PM 5 internet?
01:26PM 6 A. Yeah, that's the main entrance.
01:26PM 7 Q. But it's an accurate --
01:26PM 8 A. Yes.
01:26PM 9 Q. -- depiction of Pharaoh's; is that right?
01:26PM 10 A. Yes, that's what it looks like.
01:26PM 11 Q. So, right under that picture it says Pharaoh's
01:26PM 12 Gentlemen's Club, and then Counts 1, 3 and 4. And then it
01:27PM 13 has certain overt acts that are referenced from Count 1; is
01:27PM 14 that correct?
01:27PM 15 A. That's correct.
01:27PM 16 Q. And what are the overt acts you're referencing there?
01:27PM 17 A. 35 and 36.
01:27PM 18 Q. Now, below that, there's a box that says drug conspiracy,
01:27PM 19 maintaining Pharaoh's as a drug-involved premises. What does
01:27PM 20 that indicate on the chart?
01:27PM 21 A. That is Count 3 in the indictment.
01:27PM 22 Q. Okay. And Counts 1, 3, and 4 generally, and the judge
01:27PM 23 will go into more detail later, but is Count 1 a charged
01:27PM 24 conspiracy between Mr. Bongiovanni and Mr. Gerace to defraud
01:27PM 25 the United States; Count 3 a narcotics conspiracy; and

01:27PM 1 Count 4 a charge of bribery?

01:27PM 2 A. Count 4, I believe, is a conspiracy to distribute

01:27PM 3 narcotics.

01:27PM 4 And Count 3 is the maintaining the drug premises.

01:27PM 5 And Count 1 is the --

01:27PM 6 Q. Oh, my fault?

01:27PM 7 A. -- conspiracy to defraud the United States government, or

01:27PM 8 the United States.

01:28PM 9 Q. And then below that, you have certain exhibits that are

01:28PM 10 delineated?

01:28PM 11 A. That's correct.

01:28PM 12 Q. And what are the descriptions of those exhibits?

01:28PM 13 A. Exhibit 240F is a photo of A.A. a/k/a Cherry.

01:28PM 14 240, I think that's --

01:28PM 15 Q. L?

01:28PM 16 A. -- L, a photo of Darryl LaMont and Marcus Black.

01:28PM 17 345 is a photo of Marcus Black.

01:28PM 18 And then we've got Exhibit 560, 561 562 are photos of the

01:28PM 19 defendant and Jessica Leyland a/k/a Charm.

01:28PM 20 Q. And now at the bottom, there's a box that says witnesses

01:28PM 21 to conduct at Pharaoh's Gentlemen's Club with a number of

01:28PM 22 images with a number of images of generic males and females

01:28PM 23 with names; is that right?

01:28PM 24 A. That's correct.

01:28PM 25 Q. Okay. And what are -- just go through the names that are

1 in that box of people.

2 A. Matt Albert, K.A., A.A., Jeff Anzalone, A.A., C.B., A.B.,
3 J.C., A.G., E.H., C.H., P.H., Joseph Krywalski, L.L., K.L.,
4 John McDonald, K.M., Kevin Myszka, Katrina Nigro, A.P., G.R.,
5 J.Z., and R.W.

6 Q. Are all of those women referenced in that box women who
7 were dancers at some point at Pharaoh's? With the exception
8 of C.B. who was a manager?

9 A. Yes, that's correct.

10 Q. Are all the males referenced, with the exception of
11 Trooper Joseph Krywalski, individuals who were male patrons
12 or customers at Pharaoh's?

13 A. That's correct.

14 Q. And all of those people testified at this trial; is that
15 right?

16 A. They did.

17 Q. All right. Now I want to move on to Count 5 coming off
18 of the Pharaoh's box. And can you follow that along, and
19 explain what that is?

20 A. Count 5 relates to the conspiracy to commit sex
21 trafficking from '09 to 2018, exhibits related to that, and
22 then connected also to the expert witness, Rebecca Bender.

23 Q. Now, just to back just for a moment. There's a line
24 flowing from Pharaoh's Gentlemen's Club to the box of
25 witnesses we talked about, right?

01:30PM 1 A. Correct.

01:30PM 2 Q. In terms of a visual depiction, is that an indication
01:30PM 3 that those witnesses relate to the conduct pertaining to
01:30PM 4 those counts and the drug conspiracy?

01:30PM 5 A. That was what we were going for with that.

01:30PM 6 Q. Okay. Now, there's also a line coming from the Pharaoh's
01:30PM 7 box to a box that says conspiracy to commit sex trafficking.
01:30PM 8 And then there's a line that comes down that same box is
01:30PM 9 that, right?

01:30PM 10 A. That's correct.

01:30PM 11 Q. And just in terms of when the jury's looking at these
01:30PM 12 lines, can you explain why that flows that way as well?

01:30PM 13 A. All right. The conduct at Pharaoh's relates to the
01:31PM 14 charges as a drug conspiracy, and the maintaining of
01:31PM 15 Pharaoh's as a drug-involved premises, as well as the
01:31PM 16 Count 5, the conspiracy to commit sex trafficking.

01:31PM 17 So some exhibits I attached to the conspiracy, sex
01:31PM 18 trafficking, and some I tied more so to the narcotics
01:31PM 19 distribution and operating the drug premises.

01:31PM 20 Q. And Count 1 is the conspiracy to defraud as well?

01:31PM 21 A. Right. The conspiracy to defraud the United States a
01:31PM 22 general conspiracy count.

01:31PM 23 Q. So, does this visual depiction, was it your effort to aid
01:31PM 24 the jury to categorize witnesses and exhibits pertinent to
01:31PM 25 the charges in Counts 1, 3, 4, and 5?

01:31PM 1 A. Yes, it was.

01:31PM 2 Q. Okay. And now I didn't finish explaining, there's

01:31PM 3 another line coming over to Rebecca Bender who's sort of by

01:31PM 4 herself. What does that indicate?

01:31PM 5 A. She essentially is an expert witness as it related to sex

01:32PM 6 trafficking.

01:32PM 7 Q. Okay. So, that's why there's a line between her and the

01:32PM 8 box for conspiracy to commit sex trafficking?

01:32PM 9 A. That's correct.

01:32PM 10 Q. Okay. All right. I think we can zoom out of that for

01:32PM 11 now.

01:32PM 12 A. All right. Mr. Tripi, I did want to --

01:32PM 13 Q. I'm sorry, go through the exhibits. I'm sorry about

01:32PM 14 that. Can you explain the exhibits listed under --

01:32PM 15 A. Yes. The -- there's a photo of the hallway, upstairs at

01:32PM 16 Pharaoh's that we've seen numerous times throughout the

01:32PM 17 trial. There's photos of the VIP rooms at Pharaoh's.

01:32PM 18 There's a photo of Darryl LaMont. A photo of Darryl LaMont

01:32PM 19 Marcus Black. And then they have their related exhibit

01:32PM 20 numbers, so you'll be able to marry those up.

01:32PM 21 A photo of John Michalski and Gerace, and I believe we

01:32PM 22 only have one of those in evidence at this point, Mr. Tripi?

01:32PM 23 Q. Yes. Exhibit 310AU-2, we didn't actually put into

01:33PM 24 evidence; is that right?

01:33PM 25 A. That's correct.

1 Q. So that one's not in evidence.

2 A. Unless you want to display it to me right now.

3 Q. Sure. Is this another image that was contained in the
4 phone that Mr. Gerace had?

5 A. Yes, it's from the phone extraction similar to another
6 picture.

7 Q. Is that another photo that has Mr. Gerace and Judge
8 Michalski?

9 A. Yes, as well as Attorney Anthony Cervi.

10 Q. Is that a fair and accurate copy of an image that was in
11 the phone?

12 A. It is.

13 **MR. TRIPI:** I offer the exhibit, Your Honor.

14 **MR. FOTI:** May I just see it, Judge?

15 No objection.

16 **THE COURT:** Received without objection.

17 **(GOV Exhibit 310AU-2 was received in evidence.)**

18 **THE CLERK:** What's the number, Mr. Tripi?

19 **MR. TRIPI:** 310AU-2.

20 **THE CLERK:** Thank you.

21 **BY MR. TRIPI:**

22 Q. Now that part of the chart is correct?

23 A. That's correct. Well, there's one other error, and it's
24 because of not my using my glasses. But it's Joseph Barsuk
25 on the chart, but it's actually Barsuk. I should have had my

01:34PM 1 glasses on when I edited the chart, and I noticed it when we
01:34PM 2 blew it up.

01:34PM 3 Q. All right. So you have a typo on the spelling of a name?

01:34PM 4 A. Yeah, I should have worn my glasses.

01:34PM 5 Q. All right. So we have more exhibits that relate to that
01:34PM 6 conspiracy flowing down to towards the witness?

01:34PM 7 A. That's correct.

01:34PM 8 Q. And the jury can follow along with the number of the
01:34PM 9 exhibit and a very brief description of what the exhibit is;
01:34PM 10 is that --

01:34PM 11 A. That's correct.

01:34PM 12 **MR. TRIPI:** All right. We can zoom out of that.

01:34PM 13 Can I now have you kind of get that part,
01:34PM 14 Ms. Champoux.

01:34PM 15 **BY MR. TRIPI:**

01:34PM 16 Q. Okay. So we just sort of handled the lower part of the
01:34PM 17 chart.

01:34PM 18 Next you have another picture in the middle, that's an
01:34PM 19 Exhibit 120 --

01:35PM 20 A. -- 7.

01:35PM 21 Q. -- 7; is that right?

01:35PM 22 A. I believe that's 127, it's the cottage photo.

01:35PM 23 Q. Okay. And describe the lines coming off of there in that
01:35PM 24 direction.

01:35PM 25 A. So the Count 1 is the conspiracy to defraud the United

1 States with overt act 17. They relate to the 2005 Craig
2 Border DEA search warrant related to the photographs.

3 And then off of that line is the exhibit from the search
4 warrant at Mr. Border's then-residence back in 2005. And
5 then it ties to the testimony of Ms. Arida and Mr. Border.

6 Q. So overt act 17 relates to the incident regarding Craig
7 Border's search warrant and the photos pertaining to
8 Ms. Arida; is that right?

9 A. That's correct.

10 Q. The DEA report in evidence about that incident is
11 Exhibit 11A?

12 A. Correct.

13 Q. And the two witnesses who referenced it are Ms. Arida and
14 Mr. Border?

15 A. That's accurate.

16 Q. Is that how you read that line?

17 A. That's exactly how you read it.

18 Q. Let's go up again to the next one now.

19 Count 1, manner and means, paragraphs 4, 5, 7, 8, and
20 9 -- sorry, 8, 10, 11, 12?

21 A. That's to defraud the United States, relates to
22 Bongiovanni cold approach of Gerace that DEA Special Agent
23 Chris Wisniewski testified, and then the related DEA records
24 that were introduced related.

25 Q. So you have an indication for Chris Wisniewski being the

01:36PM 1 witness, Exhibits 30B, 30A, and Exhibit 437 relating to his
01:36PM 2 testimony, and a brief description of what the manner and
01:36PM 3 means paragraphs relate to in terms of that event.

01:36PM 4 A. Yeah, the -- to the reports.

01:36PM 5 Q. Okay. Can we move up to -- and now Count 1 repeats
01:36PM 6 itself a number of times on the chart; is that right?

01:36PM 7 A. Yeah, it's a conspiracy.

01:36PM 8 Q. Okay. And this one, this line flows from the photo,
01:36PM 9 Count 1, and it relates to overt acts 19, 20, 21, and 22; is
01:37PM 10 that --

01:37PM 11 A. That's correct.

01:37PM 12 Q. And what does the gray box mean?

01:37PM 13 A. Relates to the 2009 U.S. Probation search of Pharaoh's,
01:37PM 14 and the FBI investigation of Gerace at that time that related
01:37PM 15 to the testimony of Tom Herbst, Dale Kasprzyk, and Peter
01:37PM 16 Lepiane.

01:37PM 17 Q. Okay. And so that's over here. So if you follow the
01:37PM 18 line, those overt acts, that count, brief description of the
01:37PM 19 incident, the exhibits related to the incident, and then the
01:37PM 20 witnesses who testified about it?

01:37PM 21 A. That's correct.

01:37PM 22 **MR. TRIPI:** Okay. And, all right. Ms. Champoux, can
01:37PM 23 we zoom out, and can you get me maybe that part?

01:37PM 24 Okay. Can you move it to the middle a little more?
01:37PM 25 Move it up a little. Thank you.

23 Q. For example if we zoom out, and if the jury were to look
24 at people in the box at the bottom, were there some witnesses
25 who referenced overdoses during their testimony?

01:39PM 1 A. A number of them.

01:39PM 2 Q. Okay. Would one be K.M.?

01:39PM 3 A. Absolutely.

01:39PM 4 Q. So there was some effort made to group all the witnesses,
01:39PM 5 but the jury will have to work through it in the way they see
01:39PM 6 fit; is that right?

01:39PM 7 A. Absolutely. It's just something to aid --

01:39PM 8 Q. Okay.

01:39PM 9 A. -- the review, but not all encompassing of witnesses as
01:39PM 10 well as exhibits.

01:39PM 11 **MR. TRIPI:** Can you get me zoomed back in,
01:39PM 12 Ms. Champoux? Thank you.

01:39PM 13 **BY MR. TRIPI:**

01:39PM 14 Q. All right. Let's go through the next line that I've just
01:39PM 15 indicated. Just going now, you know, clockwise, like 1:00
01:39PM 16 there.

01:39PM 17 A. Again, it's relates to Count 1, overt acts 25, 26. It's
01:40PM 18 2016 S.A. Anthony Casullo investigation of Gerace. And then
01:40PM 19 there's a number of exhibits that relate to the event, as
01:40PM 20 well as Anthony Casullo's testimony, and he's identified at
01:40PM 21 the edge there.

01:40PM 22 Q. Okay. Can we work through the next line regarding
01:40PM 23 Count 1, overt act 27, and Count 2 as well as that way?

01:40PM 24 A. Yep. Count 1 is, again, our conspiracy. That particular
01:40PM 25 event relates to overt act 27.

Count 2 is the bribery of a public official. The event, the 2017 Gerace voicemail to Bongiovanni regarding law enforcement ability to ping a TracFone. That exhibit is in reference to 311, as well as the text message between Gerace and Bongiovanni, page 42. And it relates to testimony of Curtis Ryan.

Q. That's page 42 of Exhibit 310D, right?

A. That's correct.

Q. Okay. And the witness who was going through those text messages and that voicemail was Special Agent Ryan?

A. That's correct.

Q. All right. Let's move down to this line here, what I've just indicated, referencing Counts 1, 2, and overt acts 29, 30, and 31?

A. Correct. Those relate to the Bongiovanni memos regarding his relationship with Gerace, submitted -- if you look, it's Exhibit 97, 98, 99, those are the three memos authored by Bongiovanni regarding his communication with Gerace, as well as regarding Anthony Casullo. Additionally, there was the cottage photo. Again 311, the voicemail from Gerace to Bongiovanni. Text messages, 310D, between Mr. Gerace and Bongiovanni. A call detail connection report, the Excel spreadsheet calls between them. And the Bongiovanni/Gerace dinner photo in 2005, and then the group photo of Gerace and Bongiovanni in Las Vegas 2011. And, again, the witness who

1 introduced those was Curtis -- or, that relates to testimony
2 was Curtis Ryan.

3 Q. Now if we work through some of these, for example,
4 cottage photo, P.H. also testified about that; is that right?

5 A. Correct.

6 Q. And the -- the call detail reports and the spreadsheets,
7 Greg Machin testified about those?

8 A. Yeah, the data analyst. Again, I just couldn't -- it
9 would be too cumbersome and cluttered.

10 Q. I got you. I'm just working through some of it.

11 A. Yeah.

12 Q. If you go to 426-1, a dinner photo, there was testimony
13 about that from M.U.; is that right?

14 A. Yes, that's a photo, and Ms. R.A.

15 Q. And then if we go to 490A, group photo in Las Vegas,
16 there was testimony about that from Tara Ostrowski; is that
17 right?

18 A. That's correct.

19 Q. So again, is that just giving you an idea of a witness,
20 not necessarily every witness that relates to an exhibit?

21 A. That's correct.

22 **MR. TRIPI:** Okay. Can we zoom out of that. And I'd
23 like to kind of zoom in on this part if we could, and finish
24 off the chart.

25

2 Q. Okay. I think this is the last line we need to go
3 through. If you could, please, walk the jury through the
4 line from the Pharaoh's box to Counts 6, 7, 8, and 9, please?

7 | And 9 is a distribution of cocaine.

10 The exhibits that relate to that are the photo -- the
11 front photo of Luxor Lane, Mr. Gerace's residence, and the
12 photos that -- from the basement which is 250A-30 and
13 250A-89, and then finally the Facebook messages from Crystal
14 Quinn to P.H. And then the witnesses that relate to that are
15 C.C., P.H., and then Protected Witness 12.

19 | A. That's right.

22 | One moment, please, Your Honor.

24 THE COURT: Mr. Foti?

25 **MR. FOTI:** Yes, Judge.

CROSS-EXAMINATION BY MR. FOTI:

Q. Good afternoon, sir.

A. Good afternoon, Mr. Foti. How are you?

Q. Good, how are you?

A. Good, thanks.

Q. Okay. So you got to move back to Buffalo, it was about 2008, right?

A. That's correct.

Q. And at that point, you're still concluding some of your responsibilities in regards to investigations that you still had?

A. I was residing here, but I was routinely going back to Memphis for a couple of years.

Q. You'd have to still give testimony in certain proceedings?

A. Yeah, there were some trials that were wrapping up and some sentencing hearings.

Q. So other than the fact that you were still traveling back to Tennessee to conclude your responsibilities over there, you were part of the Niagara Falls field office as of 2008, right?

A. That's correct, I was assigned there.

Q. Okay. And at some point, you testified that Niagara Falls field office closed down based on population reduction and things like that?

01:46PM 1 A. That was my understanding, yeah.

01:46PM 2 Q. And when did that happen?

01:46PM 3 A. I think '11? 2011 or so.

01:46PM 4 Q. So in 2009, you're not -- you're still in the Niagara

01:46PM 5 Falls field office at that time?

01:46PM 6 A. That's correct.

01:46PM 7 Q. And we heard testimony during this trial about the search

01:46PM 8 of Pharaoh's back in 2009, right?

01:46PM 9 A. That's correct.

01:46PM 10 Q. And you weren't involved in that in any way?

01:46PM 11 A. No, I didn't learn about any of that until this case.

01:46PM 12 Q. Okay. And you when you say "this case," you're talking

01:46PM 13 about becoming involved in 2019 related to this?

01:46PM 14 A. Correct, that's correct.

01:46PM 15 Q. Okay. So did you work with Tom Herbst at all back then

01:47PM 16 in 2009?

01:47PM 17 A. I mean, I knew him. I'd say hi, I was friendly. We were

01:47PM 18 never partners, and I wasn't involved in the 2009 matter at

01:47PM 19 all.

01:47PM 20 Q. Any investigation he was pursuing back then did not

01:47PM 21 involve you?

01:47PM 22 A. Not at all.

01:47PM 23 Q. Okay. So you become involved in this investigation, or

01:47PM 24 at least a related investigation around 2019 about a decade

01:47PM 25 later, right?

01:47PM 1 A. Correct.

01:47PM 2 Q. And you've testified yesterday and today about some of
01:47PM 3 the evidence that was presented during the course of the
01:47PM 4 trial, right?

01:47PM 5 A. Yes, I did.

01:47PM 6 Q. You also talked about certain pieces of evidence that the
01:47PM 7 jury hadn't heard about yet including text messages?

01:47PM 8 A. That's correct.

01:47PM 9 Q. And you talked about how during the course of your
01:47PM 10 investigation, you were involved in the collection of
01:47PM 11 evidence, correct?

01:47PM 12 A. Some of it, yes.

01:47PM 13 Q. We talked about the search warrant, for example?

01:48PM 14 A. At Pharaoh's, you mean? Or --

01:48PM 15 Q. There was multiple search warrants executed, right?

01:48PM 16 A. Yes, correct, I was at three of them.

01:48PM 17 Q. And you were involved in discussions that led up to the
01:48PM 18 execution of those search warrants, correct?

01:48PM 19 A. That's correct.

01:48PM 20 Q. Including the search warrant at Pharaoh's, right?

01:48PM 21 A. Yes, that's correct.

01:48PM 22 Q. And you were aware of which members of law enforcement
01:48PM 23 would be at each of these searches, correct?

01:48PM 24 A. Generally, yes.

01:48PM 25 Q. And you were at, at least, the search of Pharaoh's

01:48PM 1 yourself, right?

01:48PM 2 A. I was physically present.

01:48PM 3 Q. And in each of -- and we're gonna talk a little bit more
01:48PM 4 about search warrants, but in each of these situations,
01:48PM 5 evidence was being collected to assist in the investigation,
01:48PM 6 correct?

01:48PM 7 A. That's correct.

01:48PM 8 Q. Okay. And you are also part of the prosecution team,
01:48PM 9 you're the case agent, right?

01:48PM 10 A. From the FBI side, yes.

01:48PM 11 Q. So, you're one of the two case agents? That was no
01:48PM 12 disrespect to agent to Special Agent Halliday.

01:48PM 13 A. No, none taken I'm sure.

01:48PM 14 Q. So that makes you a little bit different than the other
01:49PM 15 witnesses who testified in this trial in respect to you being
01:49PM 16 present during the course of the trial, correct?

01:49PM 17 A. That's correct.

01:49PM 18 Q. And you understand what a sequestration order is?

01:49PM 19 A. Yeah, I've been sequestered before during trials.

01:49PM 20 Q. And that is that witnesses can't sit in and see what
01:49PM 21 other witnesses have to say during the course of a trial,
01:49PM 22 right?

01:49PM 23 A. Correct.

01:49PM 24 Q. In your instance, because of your role as the case agent,
01:49PM 25 you sat through all the witness testimony, right?

01:49PM 1 A. Yeah, we're authorized to sit throughout the trial.

01:49PM 2 Q. And you've -- and you have assisted throughout the trial
01:49PM 3 in helping the government locate exhibits and have witnesses
01:49PM 4 ready to go?

01:49PM 5 A. Absolutely.

01:49PM 6 Q. You played a very significant role in terms of both
01:49PM 7 getting witnesses to court, as well as scheduling witness?

01:49PM 8 A. Yes, right. A lot of work.

01:49PM 9 Q. Okay. Even before this trial, you were involved in
01:49PM 10 discussions related to who the potential witnesses would be
01:49PM 11 at trial, correct?

01:50PM 12 A. Yeah. Kind of collectively look at the witnesses.

01:50PM 13 Q. And it obviously wasn't -- there was no final decision
01:50PM 14 left to you as to who witnesses were going to be called?

01:50PM 15 A. No.

01:50PM 16 Q. You were just part of the team discussion, right?

01:50PM 17 A. Yeah, that's accurate.

01:50PM 18 Q. And you were part of -- you were part of discussions as
01:50PM 19 to who would be placed on the government witness list?

01:50PM 20 A. Yes, I was part of those discussions.

01:50PM 21 Q. And -- and obviously you understand the government's not
01:50PM 22 obligated to call everybody that's placed on a witness list?

01:50PM 23 A. Correct.

01:50PM 24 Q. That's just a list of individuals the government
01:50PM 25 anticipates it may consider calling, right?

01:50PM 1 A. Yeah, that's accurate.

01:50PM 2 Q. And you were involved in discussions as to who should be
01:50PM 3 on that specific list, right?

01:50PM 4 A. Yes, I was.

01:50PM 5 Q. And you were part of discussions as to who should be
01:50PM 6 called as an actual witness at trial?

01:50PM 7 **MR. TRIPI:** Objection. Objection.

01:50PM 8 **THE COURT:** Basis?

01:50PM 9 **MR. TRIPI:** I'd like to argue further at the bench if
01:50PM 10 necessary, but 401 and 403 is the anchor of it, Judge.

01:51PM 11 **THE COURT:** Come on up.

01:51PM 12 (Sidebar discussion held on the record.)

01:51PM 13 **MR. TRIPI:** So, Judge, I think we're straying into an
01:51PM 14 area where you're gonna instruct the jury on the elements of
01:51PM 15 the proof, and that specific law enforcement techniques, I
01:51PM 16 think you're going to instruct them, are -- are -- are --
01:51PM 17 are -- and essentially we've briefed that a trial is not a
01:51PM 18 trial of the government.

01:51PM 19 So these questions are to stray into why certain
01:51PM 20 people were called and certain people weren't, and that's --

01:51PM 21 **THE COURT:** He hasn't asked that yet.

01:51PM 22 **MR. TRIPI:** That's where we're going, so I want to
01:51PM 23 preview the objection further, because we're going to be going
01:51PM 24 there. And that's -- those are not proper questions, you
01:51PM 25 know, for anybody. Like, the defendant, it creates an issue

01:51PM 1 within an issue.

01:51PM 2 **THE COURT:** I agree with that, but I don't see
01:51PM 3 anything objectionable yet.

01:51PM 4 **MR. FOTI:** I think in most instances that's true. I
01:52PM 5 am going -- I do intend to try to explore this area in part
01:52PM 6 because the direct has went through and asked about did you
01:52PM 7 interview this person in relation to the investigation, did
01:52PM 8 you interview this person in relation to the investigation. I
01:52PM 9 may be wrong, but I interpreted it that there was at least an
01:52PM 10 inference that these people, particularly the ones who are
01:52PM 11 deceased, provided favorable information. I want to explore
01:52PM 12 the fact that there was interviews that go beyond just the
01:52PM 13 ones the government's mentioned, and that a number of these
01:52PM 14 people, including former dancers, a decision was made not to
01:52PM 15 call them as witnesses.

01:52PM 16 **MR. TRIPI:** But it's -- I think that's not accurate.
01:52PM 17 Respectfully, there were several people, there were objections
01:52PM 18 being made when I was going through the text threads about
01:52PM 19 who's, like, interpreting them. So in order to link up that
01:52PM 20 it was a person relevant to Pharaoh's, I asked if that person
01:52PM 21 was interviewed, and were they essentially connected to
01:52PM 22 Pharaoh's. That's as far as I went. I was trying to
01:52PM 23 contextualize those text messages.

01:52PM 24 **THE COURT:** And you can ask those same questions
01:53PM 25 about whether people were interviewed, and you can argue to

the jury people were interviewed and not called.

MR. FOTI: That's not -- I'm not trying to, through my questions, insinuate anything beyond that. That would be argument later on about that -- that not right now, that's not exact time.

THE COURT: But I don't see how you can -- you can't ask him and a decision was not made to call this a witness.

MR. TRIPI: Correct.

THE COURT: I think you can say that witness didn't testify.

MR. FOTI: Fair enough.

THE COURT: But I don't think you can link it to the government's decision, because I don't think that's at issue. But you can ask did you interview this person, and that person wasn't called to testify --

MR. FOTI: Yeah.

THE COURT: -- then you can certainly argue that to them. I think it's a waste of time because obviously they weren't called.

MR. COOPER: I would just ask for one additional kind of boundary with respect to the questions which is I don't think it's appropriate to get into the fact that there's a government witness list that included more people than we called. That's outside of this jury's purview.

Their job is to decide the case based upon the

1 evidence that they heard in the courtroom.

2 If Mark wants to point out that those people didn't
3 testify, that's fine. I agree with the Court.

4 But suggesting that they were previously on our list
5 is inappropriate to bring in front of a jury.

6 **MR. TRIPI:** Because, one example, Cindy Moore.
7 Someone's dying. Like, there are decisions that are made that
8 have nothing to do with --

9 **THE COURT:** I understand. No, no, I agree with you.

10 **MR. FOTI:** I thought I asked the question that's --
11 that's acceptable. I didn't think I tried to insinuate that
12 you have to pick -- you have to call everybody you put on a
13 witness list.

14 **MR. COOPER:** No, but I think even talking about the
15 witness list is objectionable.

16 **THE COURT:** Right. I don't think you can ask was so
17 and so on the witness list and not called. I don't think --

18 **MR. FOTI:** I don't.

19 **THE COURT:** -- I don't think the jury gets to know
20 that somebody was on a witness list. Did you interview this
21 person? Yes. That person you didn't call. Next question.

22 **MR. FOTI:** That's it. I don't intend to --

23 (End of sidebar discussion.)

24 **THE COURT:** Okay. The objection is overruled.

25 Go ahead, next question.

01:54PM

1

BY MR. FOTI:

01:55PM

2

Q. Okay. Sir, the jury's heard from certain witnesses, some

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3

of which are listed on the chart you prepared, correct?

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4

A. That's correct.

01:55PM

5

Q. And during direct examination, you talked about a number

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of individuals that you interviewed, either you or other

01:55PM

7

agents interviewed, that did not testify, correct?

01:55PM

8

A. That is correct.

01:55PM

9

Q. Okay. And I think it's established through the questions

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10

on direct that you agree that obviously every person that you

01:55PM

11

interviewed was not somebody who ultimately testified at this

01:55PM

12

trial?

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13

A. No, definitely.

01:55PM

14

Q. You interviewed a number of people to determine whether

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they would be somebody that you would be interested in, or

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16

whether the government would potentially be interested in

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17

eliciting the information that they --

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18

MR. TRIPI: Objection.

01:55PM

19

THE COURT: Overruled.

01:55PM

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BY MR. FOTI:

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21

Q. You interviewed a number of people to determine what

01:55PM

22

information they would provide, correct?

01:56PM

23

A. That, I think, I'm comfortable answering that. Yeah, we

01:56PM

24

interviewed people to gather information.

01:56PM

25

Q. And when you -- when you interviewed people and they

provided you information, that's information you would share with other members of the investigative team?

A. Yeah, we create reports and --

Q. And those things are considered in the context of your investigation, as well as whether they're viable witnesses, correct?

A. Yeah, it goes into the calculus.

Q. Okay. You did not conduct each one of these interviews yourself personally, correct?

A. No, I did not. A number of agents and TFOs assist.

Q. Do you remember during the course of this trial there was some -- there's been a number of questions that we posed, and then there was some back and forth about how many agents were involved in this investigation? It's come up a few times?

A. Yes, especially during Agent Ryan's testimony.

Q. Okay. So, you have a better memory than me.

I'm going to go through and just ask you about a number of individuals and whether they were involved in the investigation, okay?

A. Yep.

Q. As I do this, I'm going to butcher some of your colleague's names, so apologies to them in advance.

A. I guess my one question I would have is about context, or --

Q. I'm asking at this point generally whether they were

01:57PM 1 involved in any interviews, or any involvement in the

01:57PM 2 investigation at all. And then I may ask for more specific

01:57PM 3 details.

01:57PM 4 A. Okay. Yep.

01:57PM 5 Q. Okay? And if you don't recall --

01:57PM 6 A. Absolutely.

01:57PM 7 Q. -- for some reason, let me know.

01:57PM 8 A. Yep.

01:57PM 9 Q. Adam Penna?

01:57PM 10 A. Yes.

01:57PM 11 Q. Andrea Sciolino?

01:57PM 12 A. Yes. Close.

01:57PM 13 Q. That's the first of many. Andrew Clark?

01:57PM 14 A. Andy Clark, yes, I believe he did some interviews.

01:57PM 15 Q. Anthony Butera?

01:57PM 16 A. Yes.

01:57PM 17 Q. Carly Smaldino?

01:57PM 18 A. Yes.

01:57PM 19 Q. Christopher Gabrielle.

01:57PM 20 A. I'm sorry, read it again? The name, please.

01:57PM 21 Q. Christopher Gabrielle.

01:58PM 22 A. Can I see a document to refresh my memory?

01:58PM 23 Q. I'll come back to it. Daniel Rales?

01:58PM 24 A. Some of these might be HSI folks.

01:58PM 25 Q. Okay. So if it's -- if it's somebody from the FBI,

01:58PM 1 you'll recognize it?

01:58PM 2 A. Right. And a number of HSI folks, but I think those two

01:58PM 3 names I don't recognize.

01:58PM 4 Q. Okay. Do you -- was there a -- during the course of the

01:58PM 5 trial, the name or Michelle Sercu has come up, hasn't it?

01:58PM 6 A. It has.

01:58PM 7 Q. And that is somebody you understood worked at Pharaoh's?

01:58PM 8 A. Yes. I believe she -- was she a bartender, possibly?

01:58PM 9 Q. She was interviewed back in 2019; is that right?

01:58PM 10 A. Or was she a cleaner? I'd have to see the report to --

01:58PM 11 to refresh my memory.

01:58PM 12 Q. Okay. Do you have any memory of whether she was

01:58PM 13 interviewed or not?

01:58PM 14 A. I believe she was.

01:58PM 15 Q. About December of 2019; does that sound right?

01:58PM 16 A. It might have been the day of the search at Pharaoh's,

01:58PM 17 but I'd have to see the report to really feel comfortable.

01:59PM 18 Q. Okay. Daniel Bradels?

01:59PM 19 A. As in agent?

01:59PM 20 Q. Yeah. Is that somebody who was involved?

01:59PM 21 A. Daniel --

01:59PM 22 Q. Bradels? No?

01:59PM 23 A. No. I think it's an HSI folk or person.

01:59PM 24 Q. Dennis Horrigan?

01:59PM 25 A. I think that's an HSI person. We have a Tom Horrigan.

01:59PM 1 Q. Gary Jensen?

01:59PM 2 A. Yes, that was one of my partners.

01:59PM 3 Q. Geraldo Rondon?

01:59PM 4 A. Yeah, Geraldo Rondon.

01:59PM 5 Q. Ian Languidine?

01:59PM 6 A. Yes. Don't feel bad. I worked with him for two years

01:59PM 7 and I still can't pronounce it.

01:59PM 8 Q. Jacqueline Coyne?

01:59PM 9 A. Yes.

01:59PM 10 Q. Jason Kammeraad?

01:59PM 11 A. Yes.

01:59PM 12 Q. Sean Dion?

01:59PM 13 A. I don't know that name.

01:59PM 14 Q. Joseph Spidone?

01:59PM 15 A. Yep, I know Joe Spidone.

01:59PM 16 Q. Keith Bender?

01:59PM 17 A. Yes.

01:59PM 18 Q. Cody Hughes?

02:00PM 19 A. Yep.

02:00PM 20 Q. Luke Humphrey?

02:00PM 21 A. Yes.

02:00PM 22 Q. Ralph Joseph?

02:00PM 23 A. Yes.

02:00PM 24 Q. Rebecca Gworek?

02:00PM 25 A. Yes.

02:00PM 1 Q. Richard Cawthorn?

02:00PM 2 A. Cawthard, yes.

02:00PM 3 Q. Sean Kelley?

02:00PM 4 A. Yes.

02:00PM 5 Q. Steven Olowitnik?

02:00PM 6 A. He might be a task force officer.

02:00PM 7 Q. Thomas Darcy?

02:00PM 8 A. Yes, he's a task force officer.

02:00PM 9 Q. Thomas Mozg?

02:00PM 10 A. Mozg, yep.

02:00PM 11 Q. William Forsythe?

02:00PM 12 A. Yes. I'm familiar with Agent Forsythe.

02:00PM 13 Q. Thomas Callinan?

02:00PM 14 A. His involvement related to the '09 interviews, so it was

02:00PM 15 before my, kind of like you talked about, whatever was

02:00PM 16 happening in '09.

02:00PM 17 Q. Everybody I mentioned before him are individuals that

02:00PM 18 had -- that you recognize the names for, are individuals that

02:01PM 19 had some involvement post 2019?

02:01PM 20 A. Yes. Correct.

02:01PM 21 Q. And then Tom Callinan, the point you're making is he had

02:01PM 22 some involvement in the investigation back in '09?

02:01PM 23 A. Yeah. He interviewed G.R. and K.L. and worked with Tom

02:01PM 24 Herbst back then.

02:01PM 25 Q. Right. And we talked about that a little bit throughout

02:01PM 1 the trial, that he had talked to K.L. back in '09?

02:01PM 2 A. Correct.

02:01PM 3 Q. And then visited her in the jail in '12?

02:01PM 4 A. That's correct.

02:01PM 5 Q. Okay. And then Special Agent Marilyn Halliday and

02:01PM 6 yourself are the two case agents who have been sitting in the

02:01PM 7 courtroom, correct?

02:01PM 8 A. That's correct.

02:01PM 9 Q. And there's other agents who are involved besides the

02:01PM 10 ones that I've named so far?

02:01PM 11 A. Yeah, when we have a search warrant, we have extra bodies

02:01PM 12 for that sort of thing.

02:01PM 13 Q. So, back in Curtis Ryan's testimony, when there was some

02:01PM 14 dispute about the number, we can agree that at least in terms

02:01PM 15 of interviews, there's been dozens of agents involved in

02:01PM 16 this, correct?

02:01PM 17 A. I guess -- some I'd put some context on that in the sense

02:01PM 18 that there's been -- it was a priority case, but there's also

02:02PM 19 been a lot of related investigations, spin-offs, and

02:02PM 20 different matters that kind of tie back to this case. But

02:02PM 21 there's multiple cases in one. So I just wanted to kind of

02:02PM 22 put that out there.

02:02PM 23 Q. Okay. All right. Now, you have talked about on direct,

02:02PM 24 and I just asked you a little while ago about individuals who

02:02PM 25 were interviewed but ultimately did not testify at this

02:02PM 1 trial, right?

02:02PM 2 A. I'm sorry, what was the question?

02:02PM 3 Q. There were multiple individuals who were interviewed, but

02:02PM 4 did not testify at this trial, correct?

02:02PM 5 A. Yes, that's correct.

02:02PM 6 Q. And some of those people include former employees of

02:02PM 7 Pharaoh's, correct?

02:02PM 8 A. That's correct.

02:02PM 9 Q. Some of them include former dancers, correct?

02:02PM 10 A. That's correct.

02:02PM 11 Q. And we talked about one former employee that was

02:02PM 12 interviewed was Michelle Sercu, correct?

02:02PM 13 A. Correct. And I think she was interviewed, I feel pretty

02:02PM 14 comfortable, if I read the report, it's been a long, long

02:02PM 15 time.

02:03PM 16 Q. Danielle Pericak was interviewed in July of 2020,

02:03PM 17 correct?

02:03PM 18 A. She -- yes. I don't that interview, but I know she was

02:03PM 19 interviewed. I can't say for certain a date, but --

02:03PM 20 Q. You're aware that she was interviewed by other agents?

02:03PM 21 A. That is correct.

02:03PM 22 Q. Okay. And her name came up during L.L.'s testimony

02:03PM 23 yesterday, correct?

02:03PM 24 A. Correct.

02:03PM 25 Q. She was the one that, it was said, had given drugs to the

02:03PM 1 dancer at some point early in her tenure?

02:03PM 2 A. I believe that's what she testified to.

02:03PM 3 Q. Okay. That was somebody that -- that individual,

02:03PM 4 Danielle Pericak, is somebody that you had interviewed

02:03PM 5 before, correct?

02:03PM 6 A. Yes. Not me personally, but I know she was interviewed.

02:03PM 7 Q. That agents interviewed?

02:03PM 8 A. That's correct.

02:03PM 9 Q. And she did not testify at this trial, correct?

02:03PM 10 A. She did not.

02:03PM 11 Q. Megan Stabler is another -- another former dancer whose

02:03PM 12 name has come up during the course of this trial, correct?

02:04PM 13 A. Stabler, yes.

02:04PM 14 Q. She was interviewed in July of 2020 by other agents,

02:04PM 15 correct?

02:04PM 16 A. Yes. I don't know about the date, but I know she was

02:04PM 17 interviewed.

02:04PM 18 Q. You know at some point during the investigation she was

02:04PM 19 interviewed as well?

02:04PM 20 A. Correct.

02:04PM 21 Q. And ultimately following that interview, a decision was

02:04PM 22 made that -- not to have her testify at this trial?

02:04PM 23 **MR. TRIPI:** Objection.

02:04PM 24 **THE COURT:** Sustained. You can ask that question.

02:04PM 25 Sustained to the form of the question.

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1 **BY MR. FOTI:**

2 Q. Megan Stabler was talked about during the course of this

3 trial, right?

4 A. She was, by a number of witnesses, correct.

5 Q. She did not testify, correct?

6 A. She did not.

7 Q. Another name we heard during the course of this trial was

8 DJ Robert Reed?

9 A. That's correct.

10 Q. Also an employee of Pharaoh's Gentlemen's Club?

11 A. That is correct.

12 Q. And he was interviewed in February of 23rd of 2021,

13 correct?

14 A. I interviewed him.

15 Q. You were one of at least two agents that interviewed him?

16 A. Myself and Agent Kammeraad interviewed him, yes.

17 Q. Yes. So he was interviewed. In this case, it was

18 actually by you, you were present at this interview?

19 A. Yes, I remember it.

20 Q. And he's been talked about throughout this trial?

21 A. He has.

22 Q. There was at least one picture put in evidence depicting

23 him, correct?

24 A. Yes, there was.

25 Q. And you had spoken to him a couple years ago, right?

02:05PM 1 A. Yes, I did.

02:05PM 2 Q. And he did not testify, correct?

02:05PM 3 A. He did not testify.

02:05PM 4 Q. Another name we have heard throughout this trial that's

02:05PM 5 not an employee of Pharaoh's is Russell Salvatore, his name

02:05PM 6 has come up a few times, correct?

02:05PM 7 A. Yes, it has.

02:05PM 8 Q. And this, I believe, is another individual that you had

02:05PM 9 personally interviewed, correct?

02:05PM 10 A. Yes, I remember.

02:05PM 11 Q. This was in January of 2021?

02:05PM 12 A. That sounds right. I'll take your word for it.

02:05PM 13 Q. He's the owner of Russell's, right?

02:05PM 14 A. He is.

02:05PM 15 Q. And we saw a picture of Mr. Gerace and other individuals

02:06PM 16 in the kitchen at some point at Russell's, right?

02:06PM 17 A. That's correct.

02:06PM 18 Q. No pictures of Mr. Gerace and Russell Salvatore entered

02:06PM 19 throughout this trial, correct?

02:06PM 20 A. Not during this trial.

02:06PM 21 Q. And in terms of your interview of Mr. Salvatore, that was

02:06PM 22 done at least with one other agent?

02:06PM 23 A. That was also with Jason Kammeraad. Agent Kammeraad.

02:06PM 24 Q. And he did not testify at this trial?

02:06PM 25 A. He did not.

02:06PM 1 Q. Angela Dingledey is another dancer at Pharaoh's that
02:06PM 2 you're familiar with, correct?

02:06PM 3 A. Yes, I am.

02:06PM 4 Q. You are familiar with the fact that she was interviewed
02:06PM 5 at some point in 2023, correct?

02:06PM 6 A. Yes, I remember her interview, I didn't conduct it, but I
02:06PM 7 remember.

02:06PM 8 Q. You were not present in the interview, but you remember
02:06PM 9 that she was interviewed by other agents?

02:06PM 10 A. Yes, I do.

02:06PM 11 Q. And her name I think has come up during the course of
02:07PM 12 this trial.

02:07PM 13 A. A couple times, I believe. Or text messages maybe.

02:07PM 14 Q. She didn't testify here today, correct?

02:07PM 15 A. She did not.

02:07PM 16 Q. Now on direct, there was questions about attempting to
02:07PM 17 find dancers and interview dancers, and you had testified
02:07PM 18 that there was challenges in locating some of the dancers,
02:07PM 19 right?

02:07PM 20 A. Yes, definitely.

02:07PM 21 Q. And one of the reasons you said there were challenges was
02:07PM 22 because some of them danced with their stage name, correct?

02:07PM 23 A. Right. Yeah. Other witnesses would say you should
02:07PM 24 really interview somebody, but all they had was a dancer
02:07PM 25 name, so --

02:07PM 1 Q. So when you talked about having to follow up on leads
02:07PM 2 regarding dancer names, those were names being given to you
02:07PM 3 by other potential witnesses?

02:08PM 4 A. Yeah. It's a -- yeah, and there was also -- there's a
02:08PM 5 phone -- we got a lot of leads out of John Ermin's phone. He
02:08PM 6 had a lot of the dancer names in there, so we got a lot of
02:08PM 7 leads out of that.

02:08PM 8 Q. When you conducted the search at Pharaoh's, there was
02:08PM 9 also personnel records that were seized, correct?

02:08PM 10 A. I'm sorry, I missed that.

02:08PM 11 Q. During the search of Pharaoh's in December 2019, there
02:08PM 12 were personnel records seized, correct?

02:08PM 13 A. Personnel records, correct.

02:08PM 14 Q. That included applications for -- there was an
02:08PM 15 employment, sort of, introductory form?

02:08PM 16 A. Correct.

02:08PM 17 Q. There was tax-related forms, 1099 forms, correct?

02:08PM 18 A. Correct. I skimmed those. I'm not as familiar with
02:08PM 19 them. But you did trigger my memory, I think those were
02:08PM 20 utilized, too, to sometimes help identify the dancers,
02:08PM 21 because I think they designated their stage names on some of
02:08PM 22 those documents.

02:08PM 23 Q. So you did have employment documentation at least as to a
02:08PM 24 number of employees who had worked at Pharaoh's based on what
02:08PM 25 was seized during the search?

02:08PM 1 A. Yeah, some of them. I don't think every one was in
02:09PM 2 there.

02:09PM 3 Q. I don't know if her name's come up, but there was a
02:09PM 4 dancer named A.C. who was interviewed, correct? In 2023?

02:09PM 5 A. A.C.? I don't remember it offhand. It certainly is
02:09PM 6 possible. If you give me a report, it might refresh my
02:09PM 7 memory.

02:09PM 8 Q. A.N. was a dancer. She was a dancer that was interviewed
02:09PM 9 last year, correct?

02:09PM 10 A. That sounds familiar.

02:09PM 11 Q. She didn't testify at the trial, correct?

02:09PM 12 A. There was an A.N., did not.

02:09PM 13 Q. A.C. also didn't testify at this trial, correct?

02:09PM 14 A. That's correct.

02:09PM 15 Q. We heard a lot about Jessica Leyland, and she was
02:09PM 16 interviewed by law enforcement at some point, correct?

02:09PM 17 A. Pursuant to a proffer.

02:09PM 18 Q. Right. And that's -- that happened in November of last
02:10PM 19 year, correct?

02:10PM 20 A. Correct.

02:10PM 21 Q. She did not testify at this trial, correct?

02:10PM 22 A. She did not.

02:10PM 23 Q. I think we attempted his last name earlier, and we
02:10PM 24 referred to him as Nick the manager, Nick Ciechelski?

02:10PM 25 A. Yes.

02:10PM 1 Q. Right? He's a former manager at Pharaoh's, correct?

02:10PM 2 A. That's right.

02:10PM 3 Q. And he was also interviewed in September of 2023,

02:10PM 4 correct?

02:10PM 5 A. He was interviewed not by myself, but he was interviewed.

02:10PM 6 Q. And he did not testify, correct?

02:10PM 7 A. He did not testify.

02:10PM 8 Q. There's phone records between him and Mr. Gerace that

02:10PM 9 were --

02:10PM 10 **MR. TRIPI:** Judge, I have an objection to this
02:10PM 11 continued line, if we can come up again.

02:10PM 12 **THE COURT:** Come on up.

02:10PM 13 (Sidebar discussion held on the record.)

02:10PM 14 **MR. TRIPI:** So, I -- I fail to see the relevance much
02:10PM 15 less the 403 confusion of the issues of every person on earth.
02:11PM 16 They had 200 people on their witness list. They knew who
02:11PM 17 these people are. This is an exercise, no matter what he
02:11PM 18 says, of trying to put the government on trial. It's
02:11PM 19 improper. It's improper.

02:11PM 20 If he wants to get up on summation and say you heard
02:11PM 21 no evidence from X person, that's one thing. But to sit and
02:11PM 22 go through 200 names when they have the full ability to call
02:11PM 23 whoever the hell they want, it's not proper.

02:11PM 24 I've never seen this done in my life to this extent,
02:11PM 25 and I don't think it's proper. I think there's a reason for

02:11PM 1 it.

02:11PM 2 **THE COURT:** Maybe. I disagree with you. I think
02:11PM 3 it's getting a little tedious, and I think you're going to
02:11PM 4 start losing the jury.

02:11PM 5 But I think the point is that the government had a
02:11PM 6 whole lot of people that weren't called as witnesses, and the
02:11PM 7 argument can be made those people probably had good things to
02:11PM 8 say about Mr. Gerace.

02:11PM 9 **MR. TRIPI:** See, I don't think the latter. There's
02:11PM 10 zero evidence to support the latter, because a lot of them
02:11PM 11 said not nice things about Mr. Gerace, and we still --

02:11PM 12 **THE COURT:** And you can argue -- he can argue that to
02:12PM 13 the jury. He can say to the jury you should presume. Why
02:12PM 14 can't he say that?

02:12PM 15 **MR. TRIPI:** And then we get up on rebuttal and we say
02:12PM 16 it's our burden, but they have a right to call witnesses.

02:12PM 17 **THE COURT:** No, you can't say that.

02:12PM 18 **MR. TRIPI:** I've done that before, I've briefed it.

02:12PM 19 **THE COURT:** I'd like to see it.

02:12PM 20 **MR. TRIPI:** Absolutely. I will do that, then,
02:12PM 21 because I intend to do that.

02:12PM 22 **THE COURT:** Let's keep going. Are you gonna --
02:12PM 23 you're not going to finish today.

02:12PM 24 **MR. TRIPI:** Judge, real quick on that last point,
02:12PM 25 just to -- just to finish the point, when they get up there

1 and argue missing witnesses and this is and that, there is
2 strong law, and I will get it for you before I try to do this,
3 but there is strong law that has invited comment that we can
4 rebut with -- you always couch it first by saying the burden
5 is ours, we embrace that burden.

6 **THE COURT:** If you've got law, let me look at it. If
7 you've got law, I'll look at it. Let's get going, please.

8 (End of sidebar discussion.)

9 **THE COURT:** Okay, we're gonna take a short break,
10 folks. Please remember my instructions about not discussing
11 the case with each other or anyone else, and not making up
12 your mind. See you back here in about ten or 15 minutes.

13 (Jury excused at 2:13 p.m.)

14 **THE COURT:** Okay. Anything before we break?

15 **MR. COOPER:** I guess just a -- I heard the Court ask
16 Mr. Foti a question before we walked down here about
17 scheduling. We have an hour, even when we get back from the
18 break, an hour left before the 3:30 charge conference. I
19 didn't hear Mark answer.

20 **THE COURT:** He said no, he's not gonna finish.

21 **MR. FOTI:** I don't think so, no. I might, but I
22 don't think so.

23 **MR. COOPER:** The 3:30 stop was for the charge
24 conference, not for a juror?

25 **THE COURT:** No, it was because of a juror, right?

2 **THE CLERK:** Yes, that is correct.

4 **MR. COOPER:** Oh, it is for a juror?

9 **MR. COOPER:** I'm not -- I wasn't blaming him. All I
10 was doing was asking about scheduling because we have,
11 obviously, big things to follow when the resting happens.

13 **MR. COOPER:** I'm not casting aspersions on Mark.

16 **MR. FOTI:** Well, I think we can still have the charge
17 conference.

19 **MR. FOTI:** We -- we obviously have Rule 29, nobody's
20 surprised that we're gonna make motion arguments at the end of
21 proof. We won't have spoken to Mr. Gerace yet.

22 I guess -- I haven't conferred with Mr. Soehnlein,
23 but I guess my request would be that we do the original plan
24 of either we are calling our witnesses tomorrow no matter what
25 after we finish the Rule 29, or if not, then we close Thursday

and we go back to the charge on Friday.

THE COURT: Okay. Fine. That's what we'll do.

THE CLERK: All rise.

(Off the record at 2:15 p.m.)

(Back on the record at 2:27 p.m.)

(Jury not present.)

THE CLERK: All rise.

THE COURT: Please be seated.

THE CLERK: We are back on the record for the continuation of the jury trial in case numbers 19-cr-227 and 23-cr-37, United States of America versus Peter Gerace Jr.

All counsel and parties are present.

THE COURT: Okay. Anything before we bring them back?

MR. COOPER: Just because we might not get a break before you send the jury home, Brian just mentioned to me he has a medical appointment at 8:30 tomorrow morning. He expects he would be able to be here at the latest at 9:30 tomorrow morning. Is that okay? Instead of a 9 a.m. start, would you be okay with a 9:30 start tomorrow since he's --

THE COURT: Sure. As long as we're -- we're not going to sum up tomorrow, so sure.

MR. COOPER: Yeah. Exactly. In light of that, that's why I was asking.

THE COURT: Fine. Anything we need to do before we

02:28PM 1 resume?

02:28PM 2 **MR. FOTI:** No.

02:28PM 3 **THE COURT:** Let's bring them back, please.

02:29PM 4 (Jury seated at 2:29 p.m.)

02:29PM 5 **THE COURT:** The record will reflect that all our
02:30PM 6 jurors are present.

02:30PM 7 I remind the witness he's still under oath.

02:30PM 8 Mr. Foti, you may continue.

02:30PM 9 **MR. FOTI:** Thank you, Judge.

02:30PM 10 **BY MR. FOTI:**

02:30PM 11 Q. Okay. So to fast forward a little bit, instead of just
02:30PM 12 going through individual names, is it fair to say there were
02:30PM 13 other people dancered -- sorry, other people interviewed
02:30PM 14 besides those I just mentioned?

02:30PM 15 A. Definitely.

02:30PM 16 Q. There were other dancers who were interviewed besides the
02:30PM 17 ones I just mentioned?

02:30PM 18 A. Yes, there were.

02:30PM 19 Q. Other managers who were interviewed besides those I just
02:30PM 20 mentioned?

02:30PM 21 A. Yes, there were.

02:30PM 22 Q. Okay. And -- and other than the individuals you --
02:30PM 23 that -- that the jury heard from during testimony that you
02:30PM 24 included in your chart, nobody else -- well, withdrawn.
02:30PM 25 Scrap that.

02:30PM 1 When you created the chart that -- there's a large,
02:31PM 2 enlarged cardboard copy of over there, you attempted to
02:31PM 3 include every individual who provided substantive
02:31PM 4 observations of what occurred inside Pharaoh's, correct?

02:31PM 5 A. That testified in this trial.

02:31PM 6 Q. In this trial.

02:31PM 7 A. Correct.

02:31PM 8 Q. And you didn't include individuals that you had
02:31PM 9 interviewed that did not testify, correct?

02:31PM 10 A. I -- it would only be stuff that was in the courtroom. I
02:31PM 11 mean, that was the goal of the chart.

02:31PM 12 Q. Right. This is a summary exhibit that's based on just
02:31PM 13 what happened in this trial?

02:31PM 14 A. Correct.

02:31PM 15 Q. And so obviously, a summary exhibit is not going to
02:31PM 16 include the names of the individuals I just asked you about,
02:31PM 17 correct?

02:31PM 18 A. That's correct.

02:31PM 19 Q. It doesn't include the names of the dancers who were
02:31PM 20 interviewed but did not testify, correct?

02:31PM 21 A. That's correct.

02:31PM 22 Q. It does not include the names of any managers that you
02:31PM 23 interviewed that did not testify, correct?

02:31PM 24 A. That's correct.

02:31PM 25 Q. All right.

02:31PM 1 **MR. FOTI:** Can we pull up an electronic copy of 555,
02:31PM 2 Government Exhibit 555, please.

02:31PM 3 **BY MR. FOTI:**

02:32PM 4 Q. Okay. So this is an electronic version of the summary
02:32PM 5 chart?

02:32PM 6 A. That's correct.

02:32PM 7 Q. It's the same thing as what's on the cardboard, but it's
02:32PM 8 on the TV screen for us, right?

02:32PM 9 A. That's correct.

02:32PM 10 Q. Okay. You, in preparing this chart, you included the
02:32PM 11 names of individuals who testified, correct?

02:32PM 12 A. Yes, I did.

02:32PM 13 Q. You listed exhibits, correct?

02:32PM 14 A. Some of the exhibits, yes.

02:32PM 15 Q. Some of the exhibits that you found to be relevant to a
02:32PM 16 particular topic, correct?

02:32PM 17 A. Correct.

02:32PM 18 Q. And you listed certain areas to categorize those exhibits
02:32PM 19 and witnesses, correct?

02:32PM 20 A. Correct.

02:32PM 21 Q. Okay. Now this exhibit doesn't get into the substance
02:32PM 22 of -- other than the association with certain topics, it
02:32PM 23 doesn't get into the substance of these witnesses' testimony,
02:32PM 24 correct?

02:32PM 25 A. No. That -- that wasn't -- no, I did not want to

1 interpret witnesses' testimony on the chart.

2 Q. So in terms of this summary exhibit, it doesn't give any
3 indication of which one of these witnesses were fired from
4 Pharaoh's, correct?

5 A. I'm sorry, can you repeat the question?

6 Q. The summary exhibit doesn't give any indication which
7 ones of these witnesses were fired from Pharaoh's, correct?

8 A. Correct.

9 Q. It doesn't give any indication of which ones of these
10 witnesses communicated to you that they have a bias against
11 Mr. Gerace, correct?

12 A. Which -- there's no -- there's nothing related to
13 their -- the chart doesn't have anything related to their
14 testimony.

15 Q. So, no, there's nothing on the chart that indicates which
16 one of these witnesses communicated to law enforcement that
17 they have a bias against Mr. Gerace, correct?

18 A. Correct.

19 Q. There's nothing on this chart that indicates which ones
20 of these witnesses have charges pending currently, correct?

21 A. Correct.

22 Q. There's nothing on this witness list -- or, I'm sorry, on
23 this summary exhibit that indicates which ones of these
24 witnesses had charges pending during the course of the
25 investigation, correct?

02:34PM 1 A. Correct.

02:34PM 2 Q. This list does not indicate which ones of these witnesses
02:34PM 3 received some sort of financial benefit, correct?

02:34PM 4 A. Some of the ones we paid expenses for, no.

02:34PM 5 Q. Or a dollar value associated with the benefits, or -- or
02:34PM 6 the expenses?

02:34PM 7 A. Correct.

02:34PM 8 Q. Now, during the course of the trial, some of these
02:34PM 9 witnesses were asked about expenses that were paid for them,
02:34PM 10 correct?

02:34PM 11 A. That's correct.

02:34PM 12 Q. And specifically, there is one witness over here in the
02:34PM 13 corner that was called in to testify as an expert witness,
02:34PM 14 that was Rebecca Bender, correct?

02:34PM 15 A. That's correct.

02:34PM 16 Q. And during her testimony, it came out that she was being
02:34PM 17 paid an hourly rate to testify, correct?

02:34PM 18 A. That's correct.

02:34PM 19 Q. And after -- after she concluded her testimony, she sent
02:35PM 20 an invoice for her testimony, correct?

02:35PM 21 A. I believe she did.

02:35PM 22 Q. Okay. And did you -- you understand that the total
02:35PM 23 expenses and the total invoice was \$8,7555?

02:35PM 24 A. I didn't see the invoice. I think I heard that, a number
02:35PM 25 around there. Or, I heard about the invoice, but I wouldn't

1 feel comfortable saying the exact number just because I
2 didn't see the invoice.

3 Q. Okay. But you were aware that that was sent after her
4 testimony was done?

5 A. I believe, yeah, again, remember hearing about that.

6 Q. And even if you're not sure what the specific amount is,
7 the number I just gave you of close to \$9,000, that's
8 somewhere consistent with what you had heard?

9 A. Somewhat, yeah. It was -- I wasn't part of that. I
10 remember hearing it.

11 Q. Understood.

12 **MR. TRIPI:** Mr. Foti, if you want to give me the
13 document, I'll stipulate to the number. I just don't have it
14 handy.

15 **MR. FOTI:** It's, yeah.

16 **MR. TRIPI:** If you're interested in that, sir.
17 He's going to read a number into the record, Judge,
18 and the government will stipulate.

19 **MR. FOTI:** So I'm reading in a total on the invoice
20 from Rebecca Bender, and the total invoice is \$8,755.98.

21 **MR. TRIPI:** We stipulate, Judge.

22 **THE COURT:** Okay.

23 **BY MR. FOTI:**

24 Q. All right. Nothing about the summary chart that
25 references her hourly rate, or what her expenses or what her

02:36PM 1 invoice was, correct?

02:36PM 2 A. No.

02:36PM 3 Q. This summary chart summarizing the case does not include
02:36PM 4 any inconsistencies that any of these witnesses gave in their
02:36PM 5 testimony with prior testimony, correct?

02:36PM 6 A. That doesn't encompass any sort of testimony or any kind
02:36PM 7 of interpretations of testimony either from the grand jury or
02:36PM 8 the trial.

02:37PM 9 Q. So there's nothing on this exhibit that identifies which
02:37PM 10 ones of these witnesses were impeached throughout the trial,
02:37PM 11 correct?

02:37PM 12 A. Correct.

02:37PM 13 Q. Okay. And when I say "impeached," you know I mean they
02:37PM 14 were confronted with prior sworn statements that were
02:37PM 15 different, right?

02:37PM 16 A. During cross-examination.

02:37PM 17 Q. Yeah, or direct in this case, right?

02:37PM 18 A. Correct.

02:37PM 19 Q. There was a couple direct examination witnesses that were
02:37PM 20 impeached, right?

02:37PM 21 A. I believe so.

02:37PM 22 Q. Nothing in this chart references if any of these
02:37PM 23 witnesses gave testimony inconsistent with prior statements
02:37PM 24 they gave to law enforcement, correct?

02:37PM 25 A. Correct.

Q. And nothing in this chart indicates whether any of these witnesses, during the course of their testimony, gave answers that were inconsistent with the testimony of other witnesses, correct?

A. Correct.

Q. All right. So, I'm going to --

MR. FOTI: Ms. Champoux, can we zoom in on the witnesses to conduct at Pharaoh's Gentlemen's Club section? My fat fingers can't do it unless we make it a little bigger. Okay.

BY MR. FOTI:

Q. Now we heard from L.L. -- I've never been able to pronounce her last name, it's one more I butcher, but L.L.?

A. L.L., I believe.

Q. Yeah, okay. Good. I'm glad we both have problems there.

She's the one who testified and just finished up yesterday, correct?

A. That's correct.

Q. Okay. I've just circled her name, and I circled A.A.

You recall during her testimony she was testifying about sex acts that she engaged in with A.A., correct?

A. I recall that.

MR. TRIPI: Judge, I'm going to have an objection to the next set of questions in this line. If he's going to refer to specific testimony I don't think it's appropriate,

that's the jury's domain.

THE COURT: Hang on.

MR. TRIPI: It's hearsay.

THE COURT: Well, I don't know what the line is going to be, so to the extent that there's an objection to the last question, you recall during her testimony she was testifying about sex acts she engaged in, that's overruled.

Next question.

BY MR. FOTI:

Q. You recall that testimony, right?

A. I do.

Q. Okay. And you recall that she testified about engaging in those sex acts with A.A., correct?

A. I recall that.

Q. Okay. Now, A.A. is one of the witnesses on your summary exhibit, she testified at this trial, correct?

A. She did.

Q. Okay. And you recall that A.A. indicated she never met Peter Gerace, correct?

MR. TRIPI: Objection. Again this is -- this is what I was talking about, Judge. This is for the jury to -- we're violating the domain of the jury. We're going beyond the summary chart. We're interpreting testimony through a witness. That's the jury's function.

THE COURT: Are you asking whether she testified to

that at this trial?

MR. FOTI: Yes. It was an in-court statement.

THE COURT: I mean, that is for the jury to recall, right? Why is whether this witness thinks that she testified to that or not relevant?

MR. FOTI: Well, I -- Judge, as we go through the exhibit -- well, should we approach, I guess?

THE COURT: Yeah, come on up.

(Sidebar discussion held on the record.)

THE COURT: Are you doing this to impeach him on the exhibit?

MR. FOTI: I'm not, no, I'm not. I'm not doing that.

But he's a summary witness. And, candidly, I just told Joe a little while ago I've never crossed a summary witness before. But my understanding is that they're here to highlight certain pieces of the trial that are relevant for the jury's consideration. And to the extent that there isn't -- I'm not talking about a minor inconsistency, I'm asking didn't A.A. indicate that she had never met Peter before. That's not encroaching on the jury's --

THE COURT: Well --

MR. TRIPI: I'm sorry, Judge.

THE COURT: -- it may be unless you tie it to the exhibit.

02:41PM

1

MR. FOTI: Right.

02:41PM

2

THE COURT: If you're using this to impeach him on

02:41PM

3

the exhibit that he put together, that's one thing.

02:41PM

4

But to ask him, she didn't -- she -- she testified

02:41PM

5

inconsistently with another witness, that alone, I think

02:41PM

6

that's an argument for the jury, that's something for the jury

02:41PM

7

to remember. Whether he thinks she did or not is irrelevant.

02:42PM

8

If it's relevant to his preparation of the chart in

02:42PM

9

some way --

02:42PM

10

MR. FOTI: Right.

02:42PM

11

THE COURT: -- then I think you can get to that.

02:42PM

12

MR. FOTI: Right.

02:42PM

13

THE COURT: Only in --

02:42PM

14

MR. TRIPI: And, Judge, I think it cannot by

02:42PM

15

definition of what testimony we have so far be relevant to the

02:42PM

16

chart, because he summarized no testimony. So it's not like

02:42PM

17

he picked and choosed things to include and things he didn't.

02:42PM

18

He gives a visual depiction --

02:42PM

19

THE COURT: I would not sustain an objection.

02:42PM

20

MR. COOPER: Judge, in the last point, on this in

02:42PM

21

Bongiovanni 2, and I know it was a different trial, but it was

02:42PM

22

the exact same scenario.

02:42PM

23

When I was on direct, I had what I considered to be a

02:42PM

24

wonderful direct examination, asking Special Agent Burns did

02:42PM

25

you hear so-and-so testify, and you sustained about -- and I'm

not criticizing the Court, but you sustained about a dozen objections in a row because of hearsay. The objection was hearsay, and you said Special Agent Burns can't say I heard so-and-so testify to X in court. You prevented me from doing it.

THE COURT: I don't remember that being a hearsay objection, but it may very well be a hearsay objection. But the point is that unless you can tie it into the exhibit or tie it into impeaching him in some way, it doesn't come in.

MR. TRIPI: But, Judge, can I ask one more thing? Because this devolves then into a circular thing where then I get up and I redo my redirect of those witnesses through this witness, didn't -- but didn't they say these consistent things. And I just think it's a path that is not proper.

THE COURT: I agree. And it's not something we're gonna go down unless there is a specific way to tie it into the exhibit.

That's all I'm saying. Let's go.

(Sidebar discussion held on the record.)

BY MR. FOTI:

Q. Okay. I'm going to withdraw the question I asked.

What I do want to just ask a couple quick more follow-up questions while this is still on the screen.

In terms of your summary exhibit, sir, you -- there's a heading here. These are witnesses to conduct at Pharaoh's

02:44PM 1 Gentlemen's Club -- I think that's supposed to say club,
02:44PM 2 but --

02:44PM 3 A. Oh, another typo, sorry.

02:44PM 4 Q. That's okay.

02:44PM 5 A. Yes.

02:44PM 6 Q. Nobody does more of them than me, so I won't hold it
02:44PM 7 against you.

02:44PM 8 But this is witnesses to conduct, that's what you were
02:44PM 9 trying to convey with regard to these witnesses, correct?

02:44PM 10 A. Yeah. We were very careful, when I was, to not interpret
02:44PM 11 the testimony. I thought that was neutral enough and generic
02:44PM 12 enough that it wasn't interpreting testimony. So that's why
02:44PM 13 I came up with that header.

02:44PM 14 Q. And when you say you're not trying to interpret the
02:44PM 15 testimony, you didn't include any commentary in regards to
02:45PM 16 what any of these individuals testified about, correct?

02:45PM 17 A. Correct.

02:45PM 18 Q. You didn't include any of the things that I asked about
02:45PM 19 earlier in regard to whether they had been impeached during
02:45PM 20 the course of the trial, correct?

02:45PM 21 A. Correct.

02:45PM 22 Q. And when you say witnesses to conduct, you understand
02:45PM 23 that some of these witnesses gave different answers in terms
02:45PM 24 of what conduct they witnessed, correct?

02:45PM 25 A. What -- to what conduct they witnessed? Yes.

02:45PM 1 Q. Okay.

02:45PM 2 **MR. FOTI:** Okay. We can take that down. Thank you,
02:45PM 3 Ms. Champoux.

02:45PM 4 Can we pull up Government Exhibit 490E as in
02:45PM 5 elephant.

02:45PM 6 **MS. CHAMPOUX:** There is no 490E as in elephant.

02:45PM 7 **MR. FOTI:** I'm sorry, B as in boy. Okay. And can we
02:46PM 8 zoom in on the -- yep.

02:46PM 9 **BY MR. FOTI:**

02:46PM 10 Q. All right. Sir, you're familiar with this picture,
02:46PM 11 correct?

02:46PM 12 A. Correct.

02:46PM 13 Q. Okay. And this was entered into evidence during the
02:46PM 14 course of this trial, correct?

02:46PM 15 A. That's correct.

02:46PM 16 Q. All right. And are you familiar with who the individuals
02:46PM 17 in this picture are?

02:46PM 18 A. Right. The middle one, definitely. And I believe I know
02:46PM 19 who the other two are, but I believe it's not 100 percent
02:46PM 20 certain.

02:46PM 21 Q. Who are the other -- who do you believe the other two
02:46PM 22 individuals are?

02:46PM 23 A. One on the left is possibly David, and the one on the
02:46PM 24 right is possibly Anthony.

02:46PM 25 Q. Okay.

02:46PM 1 A. I could not say with 100 percent certainty.

02:46PM 2 Q. Okay. You're not 100 percent, but your understanding is
02:46PM 3 these are the two -- it's Peter Gerace's two brothers,
02:46PM 4 correct?

02:46PM 5 A. I believe. I'm just -- I can't say with 100 percent
02:46PM 6 certainty.

02:46PM 7 **MR. FOTI:** Okay. We can take that down, thank you.

02:46PM 8 **BY MR. FOTI:**

02:46PM 9 Q. All right. During the course of this investigation,
02:47PM 10 you -- there was the collection of a number of cellular
02:47PM 11 devices at various points, correct?

02:47PM 12 A. Correct.

02:47PM 13 Q. As well as other electronic devices such as computers,
02:47PM 14 correct?

02:47PM 15 A. Correct.

02:47PM 16 Q. Tablets, right?

02:47PM 17 A. Yes. I'm trying to make a distinction between when you
02:47PM 18 say "this," you mean just related to the -- to this
02:47PM 19 defendant? Or some of the related cases I was referencing?

02:47PM 20 Q. In terms of Mr. Peter Gerace, there was one cell phone
02:47PM 21 that you reviewed, correct?

02:47PM 22 A. Correct.

02:47PM 23 Q. And that you testified about a number of conversations
02:47PM 24 from that cell phone on your direct examination?

02:47PM 25 A. Correct, the border search.

02:47PM 1 Q. And there were other electronic devices seized from his
02:47PM 2 home when the search warrant was executed, correct?

02:47PM 3 A. Yes. I recall that. I wasn't the seizing agent, and I
02:47PM 4 was at Pharaoh's.

02:47PM 5 Q. Okay. And there was other phones besides Peter Gerace's
02:48PM 6 that were reviewed, or that extractions were done during the
02:48PM 7 course of the investigation, correct?

02:48PM 8 A. Definitely.

02:48PM 9 Q. One that I think is stipulated to is Mr. Bongiovanni's
02:48PM 10 phone, correct?

02:48PM 11 A. The DEA phone, I believe.

02:48PM 12 Q. Right. There was -- there's two phones that
02:48PM 13 Mr. Bongiovanni had that you're aware of, correct? Different
02:48PM 14 timeframes?

02:48PM 15 A. Correct. There was the one that he used while he was a
02:48PM 16 DEA agent, and then there was the one in his retirement,
02:48PM 17 after he retired and after he turned the other phone in.

02:48PM 18 Q. So the -- and I think there's stipulations related to
02:48PM 19 both of those phones, right?

02:48PM 20 A. I believe there is.

02:48PM 21 Q. So those are -- the phone that he as a DEA agent was the
02:48PM 22 one that was wiped when he retired, when -- administrative
02:48PM 23 retirement, correct?

02:48PM 24 A. Correct. He turned in, it was wiped.

02:48PM 25 Q. And then there is the phone that he had post retirement

1 that he started using as his personal phone?

2 A. Correct. And that was imaged as well, I believe.

3 Q. And by "imaged," what you mean is an extraction was made
4 on the phone, correct?

5 A. Yeah, same thing. Extraction/image.

6 Q. And an extraction is like a search of the phone, pulling
7 the data out?

8 A. Right. Yeah, there's a computer tool that pulls it and
9 organizes it.

10 Q. So, other than those two phones, don't have any reason to
11 believe Mr. Bongiovanni ever possessed any other phone,
12 correct?

13 A. Not that I -- I'd have to see the search log or the
14 seizure log from his house, but there may have been, like,
15 some older phones. But those are the two that I directly can
16 recall linking to Mr. Bongiovanni.

17 Q. Okay. You don't recall any other phones specifically?

18 A. Not off the top of my head.

19 Q. Okay. And I think did you -- did you review Lou Selva's
20 phone at some point?

21 A. At some point, portions of it.

22 Q. I think you testified about it, I --

23 A. Yeah. Possibly.

24 Q. Okay. Now, you reviewed -- you reviewed phones of
25 targets of the investigation including Peter Gerace, Joseph

02:50PM 1 Bongiovanni, and then Lou Selva is another one, right?

02:50PM 2 A. I believe, yeah, I didn't spend as much time with

02:50PM 3 Mr. Selva's, but --

02:50PM 4 Q. You didn't generally have the practice of reviewing

02:50PM 5 phones of witnesses, correct?

02:50PM 6 A. I mean, I think C.C.'s phone was seized. I didn't review

02:50PM 7 it, someone else did.

02:50PM 8 I'm trying to think of witnesses.

02:50PM 9 I'm sure Myszka's was. I wasn't part of that

02:50PM 10 investigation.

02:50PM 11 So I get -- I wouldn't feel comfortable saying exactly

02:50PM 12 which -- which ones you're kind of referring to.

02:50PM 13 Q. Okay. So you have a recollection of C.C.'s phone being

02:50PM 14 imaged or extracted at some point?

02:50PM 15 A. Yes, that one, I recall through being at the --

02:51PM 16 Q. Didn't personally review it?

02:51PM 17 A. I didn't personally review it.

02:51PM 18 Q. Kevin Myszka is another one you believe the phone was

02:51PM 19 extracted at some point?

02:51PM 20 A. I don't know if I can even say that. I guess based on

02:51PM 21 the fact that he was part of a DEA investigation and was

02:51PM 22 arrested, that's common practice. But I didn't see that.

02:51PM 23 Q. It might have happened, but you didn't personally do it?

02:51PM 24 A. Right. Correct.

02:51PM 25 Q. Anybody else that you recall?

02:51PM 1 A. I think P.H.'s was. Again, I didn't review it. I think
02:51PM 2 hers was imaged or copied the day that they talked with her
02:51PM 3 at the police station.

02:51PM 4 Q. Anybody else?

02:51PM 5 A. Not that I can recall. I don't want to rule out that
02:51PM 6 there isn't another one here and there.

02:51PM 7 Q. Katrina Nigro certainly is not one that you ever searched
02:51PM 8 her phone, correct?

02:51PM 9 A. We did not.

02:51PM 10 Q. And Katrina Nigro, you heard her testimony that she gave
02:51PM 11 you the pass code to her phone at some point? Or no, I'm
02:51PM 12 sorry, it was her social media. She said she gave you her
02:51PM 13 pass code to her social media?

02:52PM 14 A. If she did, I don't recall that, and I never asked for
02:52PM 15 it.

02:52PM 16 Q. You don't remember her doing that, do you?

02:52PM 17 A. I don't have a distinctive memory of her doing that. I
02:52PM 18 mean, could she have said it in passing and I don't recall
02:52PM 19 it? That's possible.

02:52PM 20 Q. And you don't recall ever going in and reviewing her
02:52PM 21 social media?

02:52PM 22 A. That, I can say I did not.

02:52PM 23 Q. Okay. Other than what Ms. Nigro provided to you in terms
02:52PM 24 of screenshots of conversations she had, you didn't have
02:52PM 25 any other investigation into what contacts she was having

1 with witnesses, correct?

2 A. No, other than if she shared something with me.

3 Q. Now, one of the phones that spent a lot of time on direct

4 was Peter Gerace's phone, correct?

5 A. The border search one, yes.

6 **MR. FOTI:** Can we pull up 310AT.

7 **BY MR. FOTI:**

8 Q. I'm sorry, I don't mean to hold this up, but this is the

9 extraction report, the portion that deals with Mr. Gerace's

10 contacts that you were asked about on direct examination,

11 correct?

12 A. That's correct.

13 Q. And on direct examination, the government went through

14 and they identified the number of individuals who Mr. Gerace

15 has as a contact in his phone, correct?

16 A. Correct.

17 Q. And, obviously, having a contact of somebody in a phone

18 doesn't by itself mean that there's any communication with

19 them, correct?

20 A. Correct. It's a contact in a -- you would believe that

21 their storage of contact there's a purpose for that, but --

22 could you rephrase your question?

23 Q. So, for example, you've got a -- a Smartphone, I imagine,

24 correct?

25 A. Yeah. Or pixel or --

02:53PM 1 Q. So, Android or Apple, same thing, you want to add a
02:53PM 2 contact in your phone, you can add their phone number, their
02:53PM 3 names, correct?

02:53PM 4 A. Correct.

02:53PM 5 Q. That doesn't necessarily happen in conjunction with
02:53PM 6 sending a message or communicating, correct?

02:53PM 7 A. Correct, absolutely.

02:54PM 8 Q. Somebody might give you their contact information, it may
02:54PM 9 be entered with the expectation that there will be
02:54PM 10 communication down the road, right?

02:54PM 11 A. Certainly.

02:54PM 12 Q. And sometimes there may never be communication, correct?

02:54PM 13 A. Absolutely.

02:54PM 14 Q. And the contacts that are entered into the phone unless
02:54PM 15 you sort of star it or take some additional step, there's
02:54PM 16 nothing about the contacts that are ranked in term of
02:54PM 17 importance, correct?

02:54PM 18 A. Not in the contact section.

02:54PM 19 Q. And in terms of this exhibit, the contacts that you
02:54PM 20 mentioned in this report that's in evidence, doesn't indicate
02:54PM 21 the -- any order related to how much Peter Gerace had contact
02:54PM 22 with these individuals, correct?

02:54PM 23 A. Correct.

02:54PM 24 Q. The only thing this report does is indicate that at some
02:54PM 25 point, Peter Gerace or somebody using his phone, entered a

1 contact for the individuals who are listed here, correct?

2 A. That's correct.

3 Q. And you reviewed this report during the course of your
4 investigation, right?

5 A. Yes.

6 Q. So when Mr. Tripi went through and showed you different
7 pages, those were things that you had seen before, right?

8 A. Absolutely, yes.

9 Q. So you're aware of who was entered as a contact in Peter
10 Gerace's phone based on this report, right?

11 A. Correct.

12 Q. You're also aware of names that are not in this report,
13 correct?

14 A. In what context?

15 Q. So let me ask you. Is the name Joseph Barsuk in this
16 report?

17 A. I do not believe it is.

18 **MR. FOTI:** So, can we pull up side by side with this
19 Government Exhibit -- Exhibit 555?

20 **THE WITNESS:** I'm sorry, did you -- did you mean the
21 310AT, all the contacts?

22 **BY MR. FOTI:**

23 Q. Yeah.

24 A. All the contacts?

25 Q. I mean both. So let's start with 310AT, in this document

02:55PM 1 that's in evidence, this is -- this is a list of contacts?

02:55PM 2 A. Some.

02:55PM 3 Q. Yeah. And in the report that is now in evidence, Joseph

02:55PM 4 Barsuk is not in that document, correct?

02:55PM 5 A. I don't believe so.

02:55PM 6 Q. Okay.

02:55PM 7 A. I have to look at it, but I don't believe so.

02:56PM 8 Q. And you don't recall him being in Mr. Gerace's contacts

02:56PM 9 at all, correct?

02:56PM 10 A. Correct.

02:56PM 11 Q. If he was, it's something that probably would have been

02:56PM 12 put into this exhibit, fair?

02:56PM 13 A. I think that's fair.

02:56PM 14 Q. Okay. And he's not in this exhibit, correct?

02:56PM 15 A. He is not.

02:56PM 16 Q. All right. There's another individual that's been talked

02:56PM 17 about throughout this trial, an individual named Wayne

02:56PM 18 van Vleet, who you're familiar with, correct?

02:56PM 19 A. Correct.

02:56PM 20 Q. All right. In this exhibit of some of Mr. Gerace's

02:56PM 21 contacts, Wayne van Vleet is not listed, correct?

02:56PM 22 A. That's correct.

02:56PM 23 Q. And he is not listed in any of the contacts in Peter

02:56PM 24 Gerace's phone as far as you recall, correct?

02:56PM 25 A. As far as I recall, correct.

02:56PM 1 Q. If he was, it's very likely that his name would have been
02:56PM 2 placed in this report?

02:56PM 3 A. Correct.

02:56PM 4 Q. And it's not there, correct?

02:56PM 5 A. That's correct.

02:56PM 6 Q. Okay.

02:57PM 7 **MR. FOTI:** We can take that down, thank you.

02:57PM 8 **BY MR. FOTI:**

02:57PM 9 Q. You become involved in this investigation in 2019,
02:57PM 10 correct?

02:57PM 11 A. Correct.

02:57PM 12 Q. All right. And at some point, you become involved
02:57PM 13 initially at some point prior to the search of Pharaoh's in
02:57PM 14 December of 2019, correct?

02:57PM 15 A. Correct. There's a meeting in January, and I think the
02:57PM 16 first kind of, like, involvement, like, an investigative step
02:57PM 17 moving forward would have been the search of
02:57PM 18 Mr. Bongiovanni's residence on June 6th, 2019.

02:57PM 19 Q. Okay. And I think you said on direct that that search in
02:57PM 20 June 2019 is kind of a first significant event that you were
02:57PM 21 involved in as part of this investigation, correct?

02:57PM 22 A. Yeah, that's fair.

02:57PM 23 Q. So you -- your initial involvement starts, there's at
02:58PM 24 least a meeting in January several months before that search,
02:58PM 25 right?

02:58PM 1 A. Correct.

02:58PM 2 Q. And then you're at the search of Mr. Bongiovanni's home?

02:58PM 3 A. That's correct.

02:58PM 4 Q. And then towards the end of the year in December, there's
02:58PM 5 the search at Pharaoh's, correct?

02:58PM 6 A. Correct.

02:58PM 7 Q. You were asked on direct about the fact that

02:58PM 8 Mr. Bongiovanni at some point was charged with a number of
02:58PM 9 crimes, correct?

02:58PM 10 A. Yeah. The end of -- I think he's indicted at the end of
02:58PM 11 October, and it's unsealed in early November.

02:58PM 12 Q. And you testified on direct that when it was unsealed,
02:58PM 13 there was publicity related to that, correct?

02:58PM 14 A. That's correct.

02:58PM 15 Q. Now, in December, you said it was unsealed at some point
02:58PM 16 in November?

02:58PM 17 A. I thought early, without seeing the document, I think
02:58PM 18 early November.

02:58PM 19 Q. Okay. I just wanted to confirm. I think on direct you
02:58PM 20 had said it was around Halloween that the indictment was
02:58PM 21 filed; is that right?

02:58PM 22 A. Right. I think it was under seal, and then I think it
02:58PM 23 was unsealed like early November.

02:58PM 24 Q. So let's just quickly break that down for the jury.

02:59PM 25 A. Okay.

02:59PM 1 Q. When indictment is filed, charges are filed against

02:59PM 2 somebody, in some instances it's initially filed under seal

02:59PM 3 so it's not available to the public, correct?

02:59PM 4 A. Correct. Until the defendant has their initial

02:59PM 5 appearance, and then it gets unsealed.

02:59PM 6 Q. So when you're testifying about you think it might be

02:59PM 7 early November, you're referring to an event where the Court

02:59PM 8 unseals it, and then the indictment becomes public, correct?

02:59PM 9 A. I believe. I would want to see it. It's very specific.

02:59PM 10 Q. All right. And then at some point after that, there's

02:59PM 11 the search of Pharaoh's in December about four to five weeks

02:59PM 12 later, right?

02:59PM 13 A. Yes, that's accurate.

02:59PM 14 Q. Now, prior to the execution of the searches, were you

02:59PM 15 involved in the investigation into either Mr. Bongiovanni or

02:59PM 16 Mr. Gerace in other ways?

02:59PM 17 A. I guess I'm wondering what by "other ways" you mean?

03:00PM 18 Q. Well, let me -- let me -- yeah, let me withdraw that and

03:00PM 19 kind of take a step back.

03:00PM 20 Your history in the FBI includes investigations into

03:00PM 21 while collar matters, correct?

03:00PM 22 A. That's correct.

03:00PM 23 Q. Which can occasionally include fraud matters, right?

03:00PM 24 A. That's correct.

03:00PM 25 Q. And before that, you have a history of investigating a

03:00PM 1 number of narcotics investigations or matters, correct?

03:00PM 2 A. That's correct.

03:00PM 3 Q. And a lot of that was in Tennessee, right?

03:00PM 4 A. A lot of that, yeah, initially started working narcotics
03:00PM 5 when I first started.

03:00PM 6 Q. But whether Tennessee or Buffalo, New York, a lot of the
03:00PM 7 same investigative techniques are used in terms of how to
03:00PM 8 advance one of these investigations, correct?

03:00PM 9 A. Yes.

03:00PM 10 Q. And so with investigations where there is a narcotic or
03:00PM 11 controlled substance element, undercover agents are sometimes
03:00PM 12 used to try to effectuate purchases, correct?

03:00PM 13 A. Sometimes, yes.

03:00PM 14 Q. And undercover officers or agents are members of law
03:01PM 15 enforcement who are acting as if they are a customer or a
03:01PM 16 potential patron of a particular --

03:01PM 17 A. Yeah. Correct.

03:01PM 18 Q. Separate from utilizing undercovers, investigations can
03:01PM 19 utilize cooperating individuals, proactively cooperating
03:01PM 20 defendants, as part of trying to effectuate purchases,
03:01PM 21 correct?

03:01PM 22 A. It depends on the circumstances.

03:01PM 23 Q. So obviously in some circumstances, in investigations,
03:01PM 24 you're weighing a number of things such as safety concerns,
03:01PM 25 right?

03:01PM 1 A. Safety concerns. I mean, is there -- if it's smaller
03:01PM 2 amounts, are people using it, we can't have them use it. Is
03:01PM 3 it, you know, gonna take a lot of -- how are we gonna get
03:01PM 4 into the group, things like that. So there's a lot of
03:01PM 5 variables. I just don't want to paint it with a broad brush.

03:01PM 6 Q. Yeah, and I'm not -- what I'm asking about isn't intended
03:01PM 7 to suggest that this is something utilized in every
03:02PM 8 investigation, but it is a tactic that can be used in
03:02PM 9 investigations, correct?

03:02PM 10 A. Definitely.

03:02PM 11 Q. Individuals who are proactively cooperating and
03:02PM 12 attempting to sort of act in substitute to an undercover
03:02PM 13 officer, correct?

03:02PM 14 A. Like an informant, certainly.

03:02PM 15 Q. Surveillance is used during the course of a lot of
03:02PM 16 investigations, correct?

03:02PM 17 A. It can be, yeah.

03:02PM 18 Q. And there was surveillance utilized during the course of
03:02PM 19 this investigation, correct?

03:02PM 20 A. There was some, not a lot. This is more what I would
03:02PM 21 call, like, a historical conspiracy.

03:02PM 22 Q. So in terms of the witnesses who gave observations about
03:02PM 23 Pharaoh's that you summarized, or you listed on your summary
03:02PM 24 chart, a lot of them are testifying to things that happened
03:02PM 25 further in the past, correct?

03:02PM 1 A. Correct.

03:02PM 2 Q. But the search in December of 2019, was -- was utilized
03:02PM 3 to collect evidence in regard to this investigation, correct?

03:03PM 4 A. That's correct. That was the goal.

03:03PM 5 Q. And that was a search done at the end of 2019, December
03:03PM 6 2019?

03:03PM 7 A. Yeah. December 12th, I believe.

03:03PM 8 Q. Up to that point, you were still engaging in an
03:03PM 9 investigation prior to the arrest of Mr. Gerace, correct?

03:03PM 10 A. Correct.

03:03PM 11 Q. And as part of that investigation, there were a number of
03:03PM 12 tactics that you could use to try to advance that
03:03PM 13 investigation, correct?

03:03PM 14 A. Yes.

03:03PM 15 Q. Okay.

03:03PM 16 A. Correct.

03:03PM 17 Q. And did you -- did -- during the course of your
03:03PM 18 involvement in the investigation, did you ever -- were you
03:03PM 19 ever involved in an undercover officer or agent attempting to
03:03PM 20 try to make a transaction --

03:03PM 21 **MR. TRIPI:** Objection at this point, Judge. Law
03:03PM 22 enforcement techniques are not -- you're going to give an
03:03PM 23 instruction on this, I believe.

03:03PM 24 **THE COURT:** Well, let him finish the question.
25

BY MR. FOTI:

Q. So during the course of your involvement in the investigation, was there ever an attempt to have an undercover either purchase drugs or engage in a commercial sex act at Pharaoh's?

THE COURT: Don't answer.

MR. TRIPI: Now I have an objection.

THE COURT: I -- let me think.

Come on up. Come on up, guys.

(Sidebar discussion held on the record.)

THE COURT: So, the jury's going to be instructed -- you're right, specific investigative techniques are not necessary.

But the jury is going to be instructed that they can decide based on the evidence or lack of evidence.

MR. TRIPI: And those are -- I think those are two mutually exclusive instructions and things, and he can argue the lack of evidence or the lack of the quality of the evidence and various aspects, but -- based on what has or hasn't entered. But in terms of, you know, a line of cross that repeatedly hits at the opposite of what you're instructing them as to, you're gonna -- if you give the standard instruction that you normally give, Judge, you're gonna say law enforcement techniques are not for your consideration, ergo, why are we spending so much time on --

03:05PM 1 **THE COURT:** Yeah. So why -- Mr. Foti, why -- what is
03:05PM 2 the -- what is the relevance of, I assume the answer to this
03:05PM 3 is gonna be no, he didn't try to do that. So what's the
03:05PM 4 relevance?

03:05PM 5 **MR. FOTI:** I think it is relevant to the other charge
03:05PM 6 and the other point that there is certain areas where the jury
03:05PM 7 can consider there to be a lack of evidence.

03:05PM 8 And I understand the point. I'm not trying to
03:05PM 9 insinuate that there's obligation to engage in a certain
03:05PM 10 tactic or a certain law-enforcement technique. I don't think
03:05PM 11 I've asked that question.

03:05PM 12 **THE COURT:** So then what is the relevance to the fact
03:05PM 13 that they didn't make a -- a buy, an undercover buy?

03:05PM 14 **MR. FOTI:** It does speak to the insufficiency of the
03:05PM 15 evidence. That that's not something for the jury to be able
03:05PM 16 to consider.

03:05PM 17 **THE COURT:** No, no, you can argue that were no
03:05PM 18 controlled buys. That's a fact.

03:05PM 19 **MR. FOTI:** Okay. So this thing, I see what you're
03:05PM 20 saying. The distinction is --

03:05PM 21 **THE COURT:** You're asking -- you're asking him --

03:06PM 22 **MR. FOTI:** I -- I don't -- I think it survives a
03:06PM 23 relevance test. If he's the case agent, he's involved in the
03:06PM 24 investigation, and there's certain things they did do that are
03:06PM 25 fair game and certain things they didn't, it can be considered

1 as part, as long as it's not being insinuated that there was
2 an obligation --

3 **THE COURT:** There's no evidence of controlled buys,
4 right?

5 **MR. TRIPI:** So during this investigation, no. But in
6 candor, on redirect, if we go down this path, there were
7 historical buys attempted by the state police in 2015 and
8 2016. And then there was a spin-off investigation because two
9 Cheektowaga officers ran the plate of the undercover. One of
10 the days the plate was run was a day the undercover wasn't
11 there.

12 So there's this whole separate potential corruption
13 investigation spinoff into who from the Cheektowaga police may
14 have, may have, I want to be careful here, may have tipped off
15 a state police investigation.

16 **THE COURT:** I don't think you can get into there are
17 no controlled buys here. But I think you can get into
18 investigative techniques that can be used. So that you can
19 then argue, you heard him say that you can do controlled buys.
20 Is a controlled buy something you do in a drug investigation?
21 Yes.

22 I think you can do that, and then argue that you've
23 got no evidence of controlled buys here.

24 **MR. TRIPI:** Yeah. I'll address what I can on
25 redirect, Judge, I got it.

03:07PM 1 (End of sidebar discussion.)

03:07PM 2 **THE COURT:** So the objection to that question is
03:07PM 3 sustained, but you can ask another question.

03:07PM 4 **BY MR. FOTI:**

03:07PM 5 Q. Okay. So in your involvement with the FBI, you're
03:07PM 6 familiar with investigative techniques that can include
03:07PM 7 things like undercover buys in regards to drug trafficking,
03:07PM 8 correct?

03:08PM 9 A. Correct.

03:08PM 10 Q. And there can also be undercover transactions in regards
03:08PM 11 to other types of investigations, as well, correct?

03:08PM 12 A. Bribery?

03:08PM 13 Q. Bribery would be an example, that's true, right?

03:08PM 14 A. If that's where you're going, yes.

03:08PM 15 Q. Sex trafficking is another type of investigation where an
03:08PM 16 undercover --

03:08PM 17 A. You have to be careful with that. I mean, a lot of
03:08PM 18 these, if you look at all the circumstances around that,
03:08PM 19 obviously that one would be pretty tenuous, you would have to
03:08PM 20 have a --

03:08PM 21 Q. You have to be careful because obviously the interaction
03:08PM 22 could go too far, right?

03:08PM 23 A. Or even, I mean, is that person in danger. Do you need
03:08PM 24 to effectuate an arrest in the beginning? I mean, that one
03:08PM 25 would be -- a lot of things to consider before pursuing an

1 undercover related to a sex trafficking investigation.

2 Q. But it can be done, correct?

3 A. Yeah, it could be done.

4 Q. Now, search warrants. The utilization of search warrants
5 are part of conducting an -- it's an investigative technique
6 and part of trying to advance an investigation, correct?

7 A. That's correct.

8 Q. Okay. And there was some testimony about it pretty early
9 on, but a search warrant for the jury is authorization by a
10 court to conduct the search of somebody's property, correct?

11 A. Correct. You put together an affidavit. The judge --
12 you have to present it to the judge. And if he finds that
13 there's probable cause that evidence of a crime would be at
14 that location or that device, then you're authorized to
15 search it.

16 Q. So what you're referring to or the answer you just gave
17 was a reference to the procedure that precedes getting the
18 authorization to search, correct?

19 A. Correct.

20 Q. It requires a whole lot of writing in some instances,
21 correct?

22 A. Depending on how involved the probable cause is.

23 Q. And when you say the probable cause, you're laying out
24 the reason why you believe there's a basis to search a
25 particular area for a particular type of contraband or

03:10PM 1 evidence, correct?

03:10PM 2 A. Correct.

03:10PM 3 Q. And it's -- it's a different -- totally different type of
03:10PM 4 thing than what the jury has to consider, probable cause is a
03:10PM 5 different type of standard of proof, correct?

03:10PM 6 A. Yes, it's probable cause versus beyond a reasonable
03:10PM 7 doubt.

03:10PM 8 Q. And in any event, you get authorization to search an
03:10PM 9 area, and in some instances, as a result of that search, you
03:10PM 10 locate evidence, correct?

03:10PM 11 A. Correct.

03:10PM 12 Q. Or in some cases, when you're looking for drugs, for
03:10PM 13 example, you may find the drugs, correct?

03:10PM 14 A. Correct.

03:10PM 15 Q. And there was talk about, during the course of this
03:10PM 16 trial, about other searches that were executed including one
03:10PM 17 for Anthony Gerace, right?

03:10PM 18 A. Correct.

03:10PM 19 Q. Now, that was a similar procedure about going and getting
03:10PM 20 authorization to conduct a search, correct?

03:10PM 21 A. Correct.

03:10PM 22 Q. And in that instances -- in that instance, there was
03:10PM 23 evidence collected of actual drugs, correct?

03:10PM 24 A. Yes. Both marijuana, edibles, and firearms.

03:10PM 25 Q. Now, in terms of the search of Pharaoh's in 2019, I think

03:11PM 1 there was some -- were there drugs found at Pharaoh's in
03:11PM 2 2019?

03:11PM 3 A. Possibly a small amount. I think there was some
03:11PM 4 marijuana, some residue, some paraphernalia.

03:11PM 5 Q. Yeah, I'm having a hard time remembering, too. But it
03:11PM 6 was something pretty insignificant, correct?

03:11PM 7 A. I'd have to see the search log to recall, but --

03:11PM 8 Q. You don't recall what it was?

03:11PM 9 A. It was -- I believe it was some paraphernalia and maybe a
03:11PM 10 small amount of marijuana off the top of my head.

03:11PM 11 Q. Okay.

03:11PM 12 A. Along with records. I mean, you're talking about
03:11PM 13 evidence, if you're looking just for narcotics, but there was
03:11PM 14 a lot of -- there's some -- a lot of document evidence was
03:11PM 15 also seized.

03:11PM 16 Q. And we talked a little bit of that earlier that included
03:11PM 17 personnel records, correct?

03:11PM 18 A. Correct.

03:11PM 19 Q. That gave you information about prior employees, correct?

03:11PM 20 A. Correct.

03:11PM 21 Q. It included financial documents, correct?

03:11PM 22 A. Yeah, some of the financial records.

03:12PM 23 Q. And in addition, on direct, you were asked about the
03:12PM 24 seizure of certain video equipment, correct?

03:12PM 25 A. Correct.

03:12PM 1 Q. Okay. Now --

03:12PM 2 **THE COURT:** Mr. Foti, when you're at a good time to
03:12PM 3 break, I'd like to talk to you folks up at the bench again.

03:12PM 4 Go ahead, you can keep going.

03:12PM 5 **MR. FOTI:** I think this is the beginning of a whole
03:12PM 6 'nother section.

03:12PM 7 **THE COURT:** Then come on up.

03:12PM 8 (Sidebar discussion held on the record.)

03:12PM 9 **THE COURT:** So, I think the questions about whether
03:12PM 10 the government did controlled buys or not are fair game.

03:12PM 11 The charge says, begins, during the trial you have
03:12PM 12 heard testimony of witnesses and argument by counsel that the
03:12PM 13 government did not use specific investigative techniques. You
03:12PM 14 may consider these facts in deciding whether the government
03:12PM 15 has met its burden of proof because, as I told you, you should
03:12PM 16 look at all the evidence or lack of evidence in deciding
03:12PM 17 whether Mr. Gerace is guilty.

03:12PM 18 You also should understand that there's been a legal
03:13PM 19 requirement that the government use any specific investigative
03:13PM 20 technique to prove its case. Although law enforcement
03:13PM 21 techniques may be of interest to you, et cetera, et cetera.

03:13PM 22 But -- during the trial, have you heard testimony of
03:13PM 23 witnesses and argument of counsel that the government did not
03:13PM 24 use specific investigative techniques.

03:13PM 25 So, if you want to get into that, you can.

Mr. Tripi says he has stuff he wants to get into on redirect, and he can do that.

MR. TRIPI: I think he did get some of those questions out, I don't know if he wants to circle back further, but I stopped objecting after our bench conference, and I think he followed up.

THE COURT: I understand. I just want you to know, I want to make it clear, that if you want to get into questions about whether controlled buys were used, and those kinds of things, you can do that.

Because as soon as you guys left, I was thinking of what the charge was, and asked Rebecca to send it to me. And then I realized it does have that preamble in the charge. So I'm not precluding you, I'm reversing myself on the prior decision, I'm not precluding you from getting into it.

MR. FOTI: I've also thought we can do that. Sometimes Mr. Tripi is so convincing that I start to think that --

MR. TRIPI: See, I walked away thinking I lost the argument.

THE COURT: Yeah. So, but you can, Mr. Foti, just so you understand.

(End of sidebar discussion.)

MR. FOTI: We're going until 3:30 judge?

THE COURT: Yeah. I don't think it's a hard stop at

1 3:30. I think one of our jurors has to leave by 3:45, but
2 yeah.

3 **BY MR. FOTI:**

4 Q. Okay. So, sir, I wanted to ask you about something that
5 you briefly testified about on direct, and that's a reference
6 to certain DVR equipment that was seized at Pharaoh's.

7 A. That's correct.

8 Q. Okay. So, now, on direct, you testified that there was
9 essentially three different units, three DVR units located at
10 Pharaoh's in December of 2019, correct?

11 A. Correct.

12 Q. Okay. And when the search was completed, those DVRs had
13 been retained by law enforcement for further review, correct?

14 A. Correct.

15 Q. And as part of what you were reviewing was, or part of
16 what was going to be done at that point was looking through
17 the video footage to determine if it has any evidentiary
18 value, correct?

19 A. Correct. It was seized pursuant to that.

20 Q. And when you testified on direct about how far the
21 footage goes back, that was something that was learned during
22 the course of the review of that footage, correct?

23 A. Correct. From other agents who did the review.

24 Q. Okay. And I think you and Special Agent Marilyn Halliday
25 was personally involved in the review of a significant amount

03:15PM 1 of that footage, correct?

03:15PM 2 A. Correct.

03:15PM 3 Q. But obviously, footage of what was happening at Pharaoh's
03:16PM 4 was of interest to everybody on the investigative team,
03:16PM 5 correct?

03:16PM 6 A. Correct.

03:16PM 7 Q. And so there were discussions about what was contained in
03:16PM 8 those DVRs, correct?

03:16PM 9 A. Correct. From a timeframe, I can't recall. But I know
03:16PM 10 that there was some discussions about that at some point.

03:16PM 11 Q. So I'm going to ask you some questions about it, and just
03:16PM 12 answer the ones you can, or if you need --

03:16PM 13 A. Sure.

03:16PM 14 Q. -- to have your recollection refreshed, let me know.

03:16PM 15 All right. Now, as part of keeping this evidence
03:16PM 16 organized, the DVRs were essentially identified as DVR 1, 2,
03:16PM 17 and 3, correct?

03:16PM 18 A. That's correct.

03:16PM 19 Q. And you understood DVR 1 to be an equipment that
03:16PM 20 contained video footage of primarily the VIP Room and the
03:16PM 21 stage, correct?

03:16PM 22 A. I think DVR 1, I believe -- it was I believe eight
03:17PM 23 cameras, six of which were related to the VIP, one of which
03:17PM 24 might have been the edge of the stage, and I think one there
03:17PM 25 ws no recording that was retrievable.

03:17PM 1 Q. Right. Okay. Now earlier on direct you testified about
03:17PM 2 one of the DVRs had footage that goes back, I think you said
03:17PM 3 it was approximately seven weeks, correct?

03:17PM 4 A. Approximately.

03:17PM 5 Q. Now when you said that on direct, you were referring to
03:17PM 6 DVR 1, right?

03:17PM 7 A. Correct.

03:17PM 8 Q. So DVR 1 has six different camera angles of the VIP
03:17PM 9 rooms, correct?

03:17PM 10 A. Correct.

03:17PM 11 Q. And then as you testified to, there's one camera angle in
03:17PM 12 DVR 1 of the stage?

03:17PM 13 A. Right. To the left of the stage, I believe.

03:17PM 14 Q. And then one camera that's sort of a dead camera?

03:17PM 15 A. Correct.

03:17PM 16 Q. This footage went back to October 21st of 2019, correct?

03:17PM 17 A. Correct.

03:17PM 18 Q. And the search occurs on December 12th of 2019, right?

03:17PM 19 A. Correct.

03:17PM 20 Q. So, when you estimated about seven weeks, you're

03:17PM 21 referring to the footage goes back from when you searched
03:18PM 22 back to October 21st of 2019?

03:18PM 23 A. I -- that sounds correct, without looking at the report.

03:18PM 24 Q. And that was a date that preceded Mr. Bongiovanni being
03:18PM 25 charged, correct?

03:18PM 1 A. Correct, was the 19th.

03:18PM 2 Q. And certainly, it preceded the date of whenever

03:18PM 3 Mr. Bongiovanni's indictment was unsealed, correct?

03:18PM 4 A. Oh, the beginning of it would be, and then it would go up

03:18PM 5 through the time that it was unsealed.

03:18PM 6 Q. Okay. Now, in terms of the geography of Pharaoh's, had

03:18PM 7 you ever been in there prior to -- prior to the search?

03:18PM 8 A. I had not.

03:18PM 9 Q. Okay. So on that day, in addition to any interviews or

03:18PM 10 other responsibilities you had, you also were taking --

03:18PM 11 making observations of the layout, correct?

03:18PM 12 A. The first one I didn't make it up to the upstairs.

03:18PM 13 Q. Oh, you didn't go upstairs?

03:18PM 14 A. No, I did not.

03:18PM 15 Q. No?

03:18PM 16 A. No, I spent most of my time with Mr. Ermin.

03:18PM 17 Q. You talked about that on direct. Mr. Ermin was another

03:19PM 18 manager that you interviewed?

03:19PM 19 A. Yeah, Tommy O, a manager.

03:19PM 20 Q. So he was the general manager at the time that the search

03:19PM 21 was conducted?

03:19PM 22 A. Correct. He was there opening it when we got in there.

03:19PM 23 Q. Okay. So during the course of the search, there's a

03:19PM 24 point where you have a conversation with Mr. Ermin and ask

03:19PM 25 him questions relevant to the investigation, correct?

03:19PM 1 A. Correct.

03:19PM 2 Q. You also had to walk through different areas of the first
03:19PM 3 floor; is that fair?

03:19PM 4 A. That's fair.

03:19PM 5 Q. Had you walked into the VIP area?

03:19PM 6 A. I believe the interview, it's been some time, but we were
03:19PM 7 kind of on the edge of it.

03:19PM 8 Q. In the hallway?

03:19PM 9 A. I think there was a table near there. I remember seeing
03:19PM 10 that area a little bit. I don't think I sat on those
03:19PM 11 couches.

03:19PM 12 Q. Your loss.

03:19PM 13 So, okay. So in terms of the geography, you enter
03:19PM 14 Pharaoh's, you remember the -- you remember seeing the main
03:19PM 15 stage, correct?

03:19PM 16 A. Yeah, absolutely.

03:19PM 17 Q. Okay. And you remember -- there's been testimony about
03:20PM 18 that there's sort of a hallway that goes off of that,
03:20PM 19 correct?

03:20PM 20 A. It came in through kind of like the side, like the
03:20PM 21 employee entrance, and that's when Mr. Ermin was there. And
03:20PM 22 we walked through there. There was kind of where you -- I
03:20PM 23 remember the office, I did go in there. Downstairs office,
03:20PM 24 not upstairs. And then I thought we ended up at like a
03:20PM 25 little table kind of near the VIP.

03:20PM 1 Q. Okay. Do you agree that there's -- off of the main floor
03:20PM 2 area, there's sort of two separate hallways, one that goes
03:20PM 3 towards the office, and one that goes towards the VIP; is
03:20PM 4 that your recollection?

03:20PM 5 A. Best I can recall. I was pretty focused on Mr. Ermin.

03:20PM 6 Q. Okay. Fair enough. Do you -- you said you think that
03:20PM 7 you had the interview of Mr. Ermin sort of near the entrance
03:20PM 8 or close to the VIP area as you can recall?

03:20PM 9 A. As I can recall.

03:20PM 10 Q. You don't recall ever having went into the VIP area?

03:20PM 11 A. I think I looked in there, or maybe I walked through it.
03:20PM 12 I was really kind of laser focused on Mr. Ermin. We went
03:21PM 13 spent a lot of time together.

03:21PM 14 Q. In terms of what you may remember from the VIP area, you
03:21PM 15 agree there's no doors on the VIP areas, correct?

03:21PM 16 A. I remember seeing, is an open area. I mean, there might
03:21PM 17 have been a hallway that led to it.

03:21PM 18 Q. Okay. That's okay. In any event, you -- you are at
03:21PM 19 least aware of, during the course of your investigation, that
03:21PM 20 there is a VIP area that -- that can be walked through in the
03:21PM 21 back, correct?

03:21PM 22 A. Correct, yeah.

03:21PM 23 Q. And that in the VIP area, there's a number of couches
03:21PM 24 that you referenced a little while ago?

03:21PM 25 A. Correct, yes.

03:21PM 1 Q. And in some of the rooms in the VIP area, there's
03:21PM 2 multiple couches, correct?

03:21PM 3 A. Correct. As I recall.

03:21PM 4 Q. And your understanding is that there might be multiple
03:21PM 5 dances going on at the same time in the same room, correct?

03:21PM 6 A. Based on testimony and just pictures from there.

03:21PM 7 Q. And did you review some of the video footage yourself?

03:21PM 8 A. I never -- I did not review the video footage myself.

03:21PM 9 Q. So your understanding of what's in the video footage is
03:21PM 10 just based on communication as part of the investigation?

03:22PM 11 A. Correct. Reviewing reports and things like that.

03:22PM 12 Q. Okay. In any event, you understood sort of the breakdown
03:22PM 13 of what was depicted in DVR 1 as far as the cameras, correct?

03:22PM 14 A. Correct, yes.

03:22PM 15 Q. And you have already testified at this point that for six
03:22PM 16 of the cameras, they were different angles of different rooms
03:22PM 17 inside the VIP area, correct?

03:22PM 18 A. They were in the -- focused on the VIP area, is probably
03:22PM 19 an accurate way to say it.

03:22PM 20 Q. And is it your understanding as part of this
03:22PM 21 investigation that those -- that video footage from DVR 1 did
03:22PM 22 depict generally lap dances taking place?

03:22PM 23 A. Yes, it did.

03:22PM 24 Q. So from October 31st of 2019 until the time of the
03:22PM 25 search, there were lap dances happening in that VIP area,

03:22PM 1 correct?

03:22PM 2 A. Correct.

03:22PM 3 Q. And what was depicted in the cameras on DVR 1 was
03:22PM 4 recordings of those lap dances over about a seven-week
03:23PM 5 period, correct?

03:23PM 6 A. Correct.

03:23PM 7 Q. And those were -- is it fair to say that your
03:23PM 8 understanding from being involved in the investigation is
03:23PM 9 those cameras covered different rooms within the VIP area?
03:23PM 10 A. My understanding is, yeah, they were over the VIP area.
03:23PM 11 I wasn't -- I was aware -- my understanding was there were
03:23PM 12 certain areas that the cameras couldn't see.

03:23PM 13 Q. So, some of the cameras would -- would kind of peer into
03:23PM 14 one of those little side rooms sort of from the side, right?

03:23PM 15 A. Possibly. And, again, that's my understanding.

03:23PM 16 Q. Okay.

03:23PM 17 A. But I have not independently reviewed the footage.

03:23PM 18 Q. Okay. If I ask you about camera 1 specifically showing a
03:23PM 19 room that's sectioned off into three areas containing
03:23PM 20 different love seats, is that something that you are familiar
03:23PM 21 with?

03:23PM 22 A. Again, because I didn't review the footage, I know that
03:24PM 23 the cameras covered the VIP area, is what my understanding of
03:24PM 24 it was. And then I think there's that -- the Champagne area,
03:24PM 25 too, it's attached in some way.

03:24PM 1 Q. Were you familiar at some point with what each one of
03:24PM 2 those cameras showed?

03:24PM 3 A. Generally, I would say, again, the -- my understanding
03:24PM 4 was the VIP area.

03:24PM 5 Q. All right. And that's what I'm ultimately asking is
03:24PM 6 you're aware a report was produced in regard to what the
03:24PM 7 video footage showed, correct?

03:24PM 8 A. Yes, I am familiar with that report.

03:24PM 9 Q. And did you ever review that report?

03:24PM 10 A. Yes, I've reviewed it.

03:24PM 11 Q. And would reviewing that report refresh your recollection
03:24PM 12 as to what was depicted on each of those tapes?

03:24PM 13 A. Yes, it would.

03:24PM 14 **MR. FOTI:** Can we, for the witness only, pull up
03:24PM 15 3539ED. And go to page 2, please.

03:25PM 16 **BY MR. FOTI:**

03:25PM 17 Q. Okay. Is that big enough to read?

03:25PM 18 A. Yes.

03:25PM 19 Q. Can you take a moment to look through that in regards to
03:25PM 20 cameras 1 through 3?

03:25PM 21 A. Certainly. Do you want me to focus on 1 through 3?

03:25PM 22 Q. Yeah. Just what I want to ask about --

03:25PM 23 A. Okay.

03:25PM 24 Q. -- is sort of this area.

03:25PM 25 A. Got it. Yeah.

03:25PM 1 Q. And I don't mean to rush you, whenever you're done let us
03:26PM 2 know.

03:26PM 3 A. Okay.

03:26PM 4 Q. Okay. And does that refresh your recollection generally?

03:26PM 5 A. Generally, yeah.

03:26PM 6 Q. Okay. So camera 1 was of a room that was sectioned off
03:26PM 7 into three different areas, correct?

03:26PM 8 A. That's correct.

03:26PM 9 Q. Okay. And the -- in that -- and that particular camera
03:26PM 10 depicted lap dances over the course of a period of time that
03:26PM 11 we talked about, right?

03:26PM 12 A. That's correct.

03:26PM 13 Q. And as part of that, there was observations made of
03:26PM 14 things that would typically be part of a lap dance, including
03:26PM 15 dancing, as well as a customer seated as -- during the course
03:26PM 16 of the lap dance, correct?

03:26PM 17 A. Correct.

03:26PM 18 Q. The ultimate determination in terms of camera 1 was that
03:27PM 19 it had no relevant information to the investigation, correct?

03:27PM 20 A. Can I look at the report again?

03:27PM 21 Q. It should be still pulled up.

03:27PM 22 A. Yeah.

03:27PM 23 Q. So just directing your attention to kind of right here.

03:27PM 24 And if, you're looking at the second sentence, refreshes
03:27PM 25 your recollection, let us know?

03:27PM 1 A. Yeah, that's what the report states.

03:27PM 2 Q. Okay. And ultimately, that's consistent with the

03:27PM 3 determination that that footage was not going to be part of

03:27PM 4 this trial, correct?

03:27PM 5 A. Correct.

03:27PM 6 Q. Camera 2 was of a different angle inside the VIP area,

03:27PM 7 correct? Oh, no, I'm sorry. Camera 2 is of the stage; is

03:27PM 8 that right?

03:27PM 9 A. That's correct.

03:27PM 10 Q. And obviously, during the course of this trial, there

03:27PM 11 hasn't been the same type of allegations presented about the

03:27PM 12 stage, but there was no relevant information that was pulled

03:27PM 13 from camera 2, correct?

03:27PM 14 A. Correct. That's what the report says.

03:27PM 15 Q. All right. Camera 3 was another room in the VIP area, it

03:28PM 16 was a longer room containing a -- a brown love seat/couch,

03:28PM 17 right?

03:28PM 18 A. That's correct.

03:28PM 19 Q. Okay. And again, observations made during the course of

03:28PM 20 the review of that footage that there was lap dances that

03:28PM 21 took place, correct?

03:28PM 22 A. That's correct.

03:28PM 23 Q. But ultimately, it was determined there was no relevant

03:28PM 24 information, correct?

03:28PM 25 A. That's what the report indicates.

03:28PM 1 Q. Okay. And obviously, that footage wasn't shown to this
03:28PM 2 jury at any point during the trial, correct?

03:28PM 3 A. That's correct.

03:28PM 4 Q. Camera 4 was -- was footage of the first room when you
03:28PM 5 first enter the VIP Room, correct?

03:28PM 6 A. Can I get that quick --

03:28PM 7 Q. Can we go to the next page?

03:28PM 8 A. -- next page. Correct.

03:29PM 9 Q. Yeah. And in fact, just to save sort of time here --

03:29PM 10 A. Yeah.

03:29PM 11 Q. -- camera 4 and 5 were both different angles within this
03:29PM 12 room, correct?

03:29PM 13 A. Right. Camera 4 appears to have one love seat, and the
03:29PM 14 other one has three love seats.

03:29PM 15 Q. And your understanding is that it covered different
03:29PM 16 angles within one specific room, correct?

03:29PM 17 A. That's my understanding.

03:29PM 18 Q. And it's also your understanding that camera 4 did not
03:29PM 19 produce any relevant information to this investigation,
03:29PM 20 correct?

03:29PM 21 A. That's what the report indicates.

03:29PM 22 Q. And that was your understanding, is there was no
03:29PM 23 evidentiary value provided to the investigation, correct?

03:29PM 24 Setting aside the report for a second, there was
03:29PM 25 discussion of whether this DVR footage would be helpful,

03:29PM 1 right?

03:29PM 2 A. Discussion --

03:29PM 3 **MR. TRIPI:** Objection, hearsay.

03:29PM 4 **THE COURT:** Hang on. Sustained.

03:30PM 5 **BY MR. FOTI:**

03:30PM 6 Q. The DVR was seized during the course of the search

03:30PM 7 warrant in December 2019, correct?

03:30PM 8 A. Correct.

03:30PM 9 Q. And it was seized with the purpose of determining whether
03:30PM 10 there was any evidentiary value, correct?

03:30PM 11 A. Correct.

03:30PM 12 Q. And the hours spent reviewing it were -- were the reason
03:30PM 13 that it was reviewed was for the purpose of determining
03:30PM 14 whether there was, in fact, any evidentiary value to the
03:30PM 15 footage, correct?

03:30PM 16 A. Correct.

03:30PM 17 Q. And there was a significant amount of footage to review,
03:30PM 18 correct?

03:30PM 19 A. My understanding it was, took us -- it was a significant
03:30PM 20 amount of footage.

03:30PM 21 Q. And in terms of the review of that footage, it was your
03:30PM 22 understanding as part of this investigation if there was any
03:31PM 23 evidentiary value to that, it would be utilized as part of --

03:31PM 24 **MR. TRIPI:** Objection.

03:31PM 25 **THE COURT:** Sustained.

03:31PM

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BY MR. FOTI:

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Q. In terms of --

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THE COURT: I'm not precluding you from asking about

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whether he saw any of that footage. I want you to understand

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that.

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BY MR. FOTI:

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Q. So, did you -- when we asked about these different

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cameras, including camera 4 and 5 is what I was specifically

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9

asking about, did you review it yourself?

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A. I did not.

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Q. Okay. So your understanding about whether it had any

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relevant information was based on the review of other members

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of the team, correct?

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A. Correct.

03:31PM

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Q. Okay. And is it your understanding that cameras 4 and 5

03:31PM

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did not have any relevant information?

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A. Based on the report, I guess the only caveat, I think

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this ultimately turned out to be outside the timeframe of our

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conspiracy. So, I mean, you're asking about whether it was

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used or not. I don't know.

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Q. So at the time you just referred to the timeframe of the

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conspiracy, and you're referencing the timeframe and the

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charges in the indictment, correct?

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A. Correct.

03:32PM

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Q. At this point, Mr. Gerace was not charged, correct?

03:32PM 1 A. Right.

03:32PM 2 Q. In December, or I guess when the search was conducted,
03:32PM 3 Mr. Gerace had not yet been charged, correct?

03:32PM 4 A. When the search was conducted, he was not charged.

03:32PM 5 Q. And do you recall when footage was reviewed?

03:32PM 6 A. You have to go to the front page of the report. I think
03:32PM 7 it --

03:32PM 8 **THE COURT:** Mr. Foti, we're past 3:30, so wherever
03:32PM 9 you want to stop. You know, we've got until 3:45, so any time
03:32PM 10 within the next 13 or 14 minutes.

03:32PM 11 **MR. FOTI:** Okay. All right. Thank you, Judge.

03:33PM 12 Can we go and just to page 1 of the document.

03:33PM 13 **BY MR. FOTI:**

03:33PM 14 Q. Does looking at that refresh your recollection?

03:33PM 15 A. It says date approved 5/10/23. Maybe the next page, if
03:33PM 16 there's a reference to when it was actually reviewed.

03:33PM 17 **MR. FOTI:** Can we go to page 2?

03:33PM 18 **THE WITNESS:** Yeah, I mean, the best I can come up
03:33PM 19 with is the date of approval of the document. I can't
03:33PM 20 definitively say when it was reviewed.

03:33PM 21 **BY MR. FOTI:**

03:33PM 22 Q. It was just sometime before that?

03:33PM 23 A. It was sometime before that, correct.

03:33PM 24 Q. All right. And you don't have an independent
03:33PM 25 recollection of when the footage was reviewed based on your

03:33PM 1 conversations with Special Agent Halliday or anybody else?

03:33PM 2 A. It was closer in proximity to, I think, the date

03:33PM 3 approved. I think that's accurate. I don't want to commit

03:33PM 4 to something that I'm not 100 percent certain on.

03:33PM 5 **MR. FOTI:** Why don't we pause here, Judge?

03:33PM 6 **THE COURT:** Okay. Great. So, folks, we're done for
03:34PM 7 the day.

03:34PM 8 Remember my instructions about not communicating
03:34PM 9 about the case with anyone in any way. Don't use tools of
03:34PM 10 technology to communicate about the case or to learn about the
03:34PM 11 case in any way. Don't do any research about the case. Don't
03:34PM 12 read or watch or listen to any news coverage of the case, if
03:34PM 13 there is any, while the trial is in progress. And don't make
03:34PM 14 up your minds until you start deliberating.

03:34PM 15 We're going to start at 9:30 tomorrow for a few
03:34PM 16 reasons. We have a juror who's getting stitches out, I
03:34PM 17 understand. No? That's not true?

03:34PM 18 **JUROR 2:** Yeah, I'll be good tomorrow.

03:34PM 19 **THE COURT:** And you should be able to be here by
03:34PM 20 9:30, is that --

03:34PM 21 **JUROR 2:** I should be able to be here by 9.

03:34PM 22 **THE COURT:** We've got some other reasons. I have
03:34PM 23 some other things that I need to do. So we're going to start
03:34PM 24 at 9:30. We're going to go until -- I don't know when, but no
03:34PM 25 later than 5:30 tomorrow.

1 And then Thursday and -- Thursday, we're gonna go
2 from 9 until 5:30. And then Friday from 9 until 12:30ish.
3 I'm going to give you my charge on -- the plan right now is
4 for me to give you my charge on Friday morning, which is
5 probably about three, three and a half hours. So we're going
6 to try do that. Okay?

7 Thank you very much. Drive carefully. Get a good
8 night's sleep.

9 (Jury excused at 3:35 p.m.)

10 (Excerpt concluded at 3:25 p.m.)

11 * * * * *

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15
16 **CERTIFICATE OF REPORTER**

17
18 In accordance with 28, U.S.C., 753(b), I
19 certify that these original notes are a true and correct
20 record of proceedings in the United States District Court for
21 the Western District of New York on December 17, 2024.

22
23 s/ Ann M. Sawyer
24 Ann M. Sawyer, FCRR, RPR, CRR
25 Official Court Reporter
U.S.D.C., W.D.N.Y.

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EXCERPT - EXAMINATION OF BRIAN BURNS - DAY 2

DECEMBER 17, 2024

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